



**Department of the Treasury
Alcohol and Tobacco Tax and Trade Bureau**

April 2009

**INFORMATION SHEET
FOR**

**CLAIMS FOR CREDIT OR REFUND OF OVERPAYMENTS OF MANUFACTURER'S
EXCISE TAXES TAKEN AS DECREASING ADJUSTMENTS ON FEDERAL
FIREARMS AND AMMUNITION EXCISE TAX (FAET) RETURNS**

**TO: Manufacturers, producers and importers of firearms and shells and
cartridges (ammunition).**

PURPOSE:

This sheet provides information and guidance to those firearms and ammunition excise taxpayers who are taking decreasing adjustments on Line 19 of their TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return.

Effective immediately, all firearms and ammunition excise taxpayers taking decreasing adjustments on Line 19 of their tax returns must submit the documentation to substantiate all decreasing adjustments reflected with the respective tax return.

This documentation must be mailed with the tax return to the following address on a timely basis:

TTB
Excise Tax
P. O. Box 979055
St. Louis, MO 63197-9000

BACKGROUND:

In the past, taxpayers were required to fully explain in Schedule C any decreasing adjustments that were taken on Line 19 - but were instructed to retain the documentation to substantiate their decreasing adjustments at their business premises. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has determined that the required supporting documentation must accompany the respective tax return so the adjustments can be promptly verified.

Decreasing Adjustments on Federal Firearms and Ammunition Excise Tax Returns

Schedule C is used by taxpayers to report adjustments decreasing the amount of firearms and ammunition excise tax they owe to include decreases for sales or uses reported as taxable on the current or previous tax returns that are resold for certain tax-free purposes or determined later to qualify as tax-free.

The amount shown as a decreasing adjustment on Line 19 cannot exceed the amount shown on Line 18 (My Gross Tax). Any excess must be carried over as a credit on your next tax return in Schedule C, Line 37 or you can file a TTB Form 5620.8, Claim – Alcohol, Tobacco and Firearms Taxes, for a refund.

ADDITIONAL INFORMATION:

Title 27, Code of Federal Regulations (CFR), Part 53, Section 53.185, Credit on Returns – states – any person entitled to claim refund on any overpayment of tax imposed by Chapter 32 of the Code, may in lieu of claiming refund of the overpayment, claim credit for the overpayment on any return of tax under this subpart subsequently filed. Any such credit claimed on a return must be supported by the evidence prescribed in the applicable regulations in this subpart and Title 26, CFR, 70.123 (Procedure and Administration).

If the documentation in support of any decreasing adjustment is not submitted or if it is insufficient to substantiate such adjustments, an assessment of tax, penalties and interest may be initiated.

CLAIMS FOR CREDIT OR REFUND:

Attached is a package titled “Firearms & Ammunition Excise Tax (FAET) Claims for Credit or Refund Information”. This extensive package provides applicable information (to include the necessary supporting documentation) for every type of claim/credit that the FAET industry will encounter.

QUESTIONS:

If you have any questions concerning the information contained in this information sheet, please contact:

Decreasing Adjustment on Federal Firearms and Ammunition Excise Tax Returns

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

Telephone Nos: Direct Line: 513-684-3817
 Toll Free: 877-882-3277

FAET Group fax number: 202-453-2990

FAET Group e-mail address: ttbfaet@ttb.gov

ATTACHMENT:

Firearms & Ammunition Excise Tax (FAET) Claims for Credit or Refund
Information

**FIREARMS &
AMMUNITION
EXCISE TAX (FAET)
CLAIMS FOR
CREDIT OR
REFUND
INFORMATION**

**FIREARMS & AMMUNITION EXCISE TAX (FAET)
CREDIT/CLAIMS INFORMATION**

I. GENERAL INFORMATION

A. Credits and refunds

1. Title 26, United States Code (U.S.C.), Section 6402 and Title 27, Code of Federal Regulations (CFR), Section 70.122 gives the Alcohol and Tobacco Tax and Trade Bureau (TTB) authority to make credits and refunds resulting from overpayments of tax in accordance with the requirements of 27 CFR 70.123. (Also see 27 CFR 70.124 (Procedure and Administration)).
2. Under 27 CFR 53.171, the taxpayer can either take a credit in Schedule C (My Decreasing Adjustments) of a subsequent TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return or request a refund by filing a TTB Form 5620.8 – Claim Alcohol, Tobacco and Firearms Taxes. These forms can be obtained from the TTB Website at www.ttb.gov or from the Firearms and Ammunition Excise Tax Group at the National Revenue Center (NRC). (Also see 26 U.S.C.6416 and 27 CFR 53.171 - 53.186.)
3. Except for claims filed under the General Refund Provision, 26 U.S.C. 6402, all manufacturer's FAET Claims are filed under 26 U.S.C. 6416.

B. Statute of limitations (26 U.S.C. 6511 and 6513)

1. 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.** (In a case where a taxpayer has only filed deposits and not a return.)
 - 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.

C. Condition to Allowance Rule - How it applies to certain types of claims

The Condition to Allowance Rule (General Rule) under 26 U.S.C. 6416(a)(1) applies to certain FAET claims. The purpose of the Condition to Allowance Rule is to insure that the party paying the tax is also the party bearing the burden of the tax. When a manufacturer, producer or importer sells an article, he normally passes the FAET along to the purchaser in the sale price. Although the manufacturer, producer or importer pays the FAET to TTB in most instances, it is the purchaser who bears the burden of the tax (in the sale price). The Condition to Allowance Rule ensures that the manufacturer, producer or importer both pay the tax and bear the burden of the tax before a claim for credit or refund is allowed. Therefore, in addition to evidence required to allow certain claims the requirements of the following Condition to Allowance Rule are applicable to allow certain claims.

Condition to Allowance -- 26 U.S.C. 6416(a)

1. **General Rule:** "No credit or refund of any overpayment of tax imposed by Chapter 31 (relating to retail excise taxes) or Chapter 32 (manufacturer's taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he:
 - A. 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;
 - B. has repaid the amount of the tax to the ultimate purchaser of the article;
 - C. in the case of an overpayment under subsection (b) (2) of this section-
 - (i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or
 - (ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or
 - D. 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.

II. TYPES OF CLAIMS FOR CREDIT OR REFUND

There are 7 different types of claims for credit or refund that can be filed by FAET payers that are processed by the FAET Group at the NRC.

A *credit* should be reflected on Line 19 of your TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return and in Schedule C (My Decreasing Adjustments). The required supporting documentation to substantiate the credit must accompany the tax return and be submitted to the following address on a timely basis:

TTB
EXCISE TAX
P. O. BOX 979055
ST. LOUIS, MO 63197-9000

Alternatively, a claim filed on TTB Form 5620.8 - Claim Alcohol, Tobacco and Firearms Taxes can be submitted (in duplicate) to the following address on a timely basis with all the required supporting documentation:

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
NATIONAL REVENUE CENTER
ATTN: FAET GROUP
8002 FEDERAL OFFICE BUILDING
550 MAIN STREET
CINCINNATI, OHIO 45202-5215

The 7 different types of claims for credit or refund are explained in this information packet along with the following information for each type of claim:

1. A brief scenario of when each type of claim is applicable.
2. The legal authority to allow each type of claim.
3. Whether the Condition to Allowance Rule is applicable to each type of claim.
4. Evidence required to support each type of claim.
5. Whether or not interest is allowable on each type of claim.

The following are the 7 different types of claims for credit or refund that can be filed by FAET payers:

1. CLAIMS FILED WHEN NO LIABILITY EXISTS OR TAX IS PAID IN ERROR

This type of claim is a claim filed when no liability exists or tax is originally paid in error.

This type of claim is filed when taxpayer makes a simple overpayment or when no liability exists and tax was paid in error.

Some Examples Include:

- a. Math errors, e.g. taxpayer paid \$300 when all his documentation showed that he should have paid \$150.
 - b. Tax return filer does not manufacture or import; therefore, he/she was not liable for FAET.
 - c. Taxpayer paid FAET after paying NFA transfer tax.
 - d. Tax is erroneously paid on nontaxable parts or accessories.
1. Legal Authority for this type of claim is 26 U.S.C. 6402 (26 U.S.C. 6402 is the General Refund Provision).
 2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **generally applies to** these types of claims. The only possible exception would be in those instances mentioned in example a. above (math errors - where taxpayer inadvertently fills in wrong dollar amount on return or makes check out for wrong amount).
 3. Evidence Required To Support This Type of Claim:
 - a. Documentation will have to be provided by 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 invoices, sales records etc.
 - b. 27 CFR 53.172(a)(2) requires the person who paid the tax to submit with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submit with the claim 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.

4. Interest is allowable on this type of claim.

2. CLAIMS INVOLVING EXPORTATION, USES AND RESALE OF ARTICLES (TAX-FREE SALES) - (FILED BY THE MANUFACTURER)

This type of claim is filed by the taxpayer involving exportation, uses and resales of articles (tax-free sales) – *filed by the manufacturer*. (Note: Export claims can be filed by someone other than the manufacturer and this type of claim is explained later in this information packet.)

Taxpayer may only request a refund or credit in the following cases where the exportation, use, sale or resale of the FAET article occurs before any other use. Tax overpayments arise when the following occur:

- a. Exportation of tax-paid FAET articles.
- b. FAET articles used or sold as supplies on vessels or aircraft.
- c. FAET articles sold to a State or local government for their exclusive use.
- e. FAET articles sold to a nonprofit educational organization for its exclusive use.

Some of the evidence required to support this type of claim is to be retained by the claimant and not provided with the submitted claim. However, this information must be available upon request of the FAET Group or TTB Field Personnel.

- 1. Legal Authority for this type of claim is 26 U.S.C. 6416(b)(2).
- 2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **is applicable** to this type of claim.

3. Evidence required to support this type of claim:

a. Statement under 27 CFR 53.172(b)(2) asserting that:

- (i) The person 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 repaid, or agreed to repay the amount of the tax to the ultimate vendor or the article, or
- (iii) The person has secured, and will submit upon request of the appropriate TTB officer, the written consent of the ultimate vendor to the allowance of the credit or refund.

b. Statement under 27 CFR 53.179(a):

- (1) Showing the amount claimed in respect of each category of exportations, uses, sales or resales in which the claim is based and which gives rise to the right of credit or refund under 26 U.S.C. 6416(b)(2) and 27 CFR 53.177.
- (2) Identifying the articles, both as to nature and quantity, in respect of which the credit or refund is claimed.
- (3) Showing the amount of tax paid in respect of the article or articles and the dates of payment.
- (4) Indicating that the claimant has in his possession evidence as set forth in 27 CFR 53.179(b)(1) that the articles have been exported, or have been used, sold or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of 26 U.S.C. 6416(b)(2) and 27 CFR 53.178.

c. Evidence Required to be in Possession of the Claimant Under 27 CFR 53.179(b):

a. Proof of exportation as prescribed by 27 CFR 53.133. Such evidence can take one of the following forms:

- (1) A copy of the export bill of lading issued by the delivering carrier,
- (2) A certificate by the agent or representative of the export carrier showing actual exportation of the article. An example of this would be an airway bill or shipper's declaration,
- (3) A certificate of landing signed by a Customs Officer of the foreign country to which the article is exported,
- (4) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article,
- (5) Where a department or agency of the U.S. Government is unable to furnish any one of the foregoing four types of proof of exportation, a statement or certification on the department or agency stationery, executed by an authorized officer, that the listed or identified articles have, in fact, been exported.

b. In lieu of retaining the evidence under 27 CFR 53.133, the taxpayer can obtain a certificate from the person to whom the articles were sold. This statement takes two separate forms, i.e. Certificate of the Ultimate Purchaser or Certificate of the Ultimate Vendor.

- (1) Certificate of ultimate purchaser. Section 53.172(a)(3)(i) defines the term "ultimate purchaser" as the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

- (a) The certificate must contain all information required by 27 CFR 53.179(b)(1)(ii), i.e. identify the article (both as to nature and quantity), show address of ultimate purchaser, which describes the use made of the article in sufficient detail to establish that the credit or refund is due.
 - (b) A Certificate of Ultimate Purchaser can take various forms, i.e. purchase orders, invoices, etc. All forms are acceptable so long as the certificate contains all the information required by the Certificate of Ultimate Purchaser.
- (2) Certificate of Ultimate Vendor. 27 CFR 53.172(b)(3) defines the term "ultimate vendor" as the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.
 - (a) The certificate must contain all information required by 27 CFR 53.179(b)(1)(iii). This regulation sets out a format of such a statement.
 - (b) As with Certificate of the Ultimate Purchaser the Certificate of the Ultimate Vendor can appear on purchase orders, invoices, etc., so long as all required information is present.
 - (c) The difference between the Certificates of Ultimate Purchaser and Ultimate Vendor is the party that must submit them. Be mindful of the definition of these terms.

(Note: TTB F 5600.33, Statement of Ultimate Vendor, when fully completed, contains all necessary information for a properly executed certificate).

4. No interest shall be paid on this type of claim.

3. CLAIMS FILED FOR REFUND OR CREDIT FOR TAX-PAID FAET ARTICLES USED FOR FURTHER MANUFACTURE

This type of claim is filed by the subsequent manufacturer when the original manufacturer sells a FAET tax-paid article either directly or indirectly to a subsequent manufacturer who:

- a. Uses such article in further manufacture of a second FAET article, or
- b. Sells such article with, or as part of, the second article manufactured or produced by the subsequent manufacturer.

Who may file a claim for refund for use in further manufacture?

- a. Only the subsequent manufacturer may file a claim, take a credit or request a refund on a return. (A subsequent manufacturer is the manufacturer who purchases the tax-paid article directly from the first manufacturer of the article or through an intervening dealer or other individual or entity).
1. Legal authority for this type of claim is 26 U.S.C. 6416(b)(3).
 2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **does not apply** to this type of claim.
 3. Evidence Required to Support This Type of Claim:
 - a. Statement Required under 27 CFR 53.182(a):
 - (1) The amount claimed in respect of each category of exportations, uses, or sales on which the claim is based.
 - (2) The name and address of the manufacturer, producer, or importer of the article in respect of which credit or refund is claimed.

- (3) Identification of the FAET article, both as to nature and quantity, in respect of which credit or refund is claimed.
- (4) The amount of tax paid in respect of the FAET article by the manufacturer, producer of the article and the date of payment.
- (5) Indication that the FAET article was used by the manufacturer or sold on or in connection with the sale of a second FAET article manufactured or produced by the manufacturer.
- (6) Identification of the second FAET article both as to nature and quantity.

b. Evidence Required to be in Possession of the Claimant under 27 CFR 53.182(b):

- (1) Certificate of ultimate purchaser of second FAET article.
- (2) Certificate of ultimate vendor of second FAET article, if necessary.
- (3) Repayment or consent of ultimate vendor, if necessary.

4. No interest shall be paid on this type of claim.

4. CLAIMS FOR REFUND OR CREDIT FOR RETURN OF TAX-PAID INSTALLMENT ACCOUNTS CAUSING OVERPAYMENT OF TAX

This type of claim is a claim for refund for return of tax-paid installment accounts causing overpayment of tax. This type of claim is filed when overpayment occurs when manufacturer who has previously tax paid and sold an installment account and is re-purchasing the account pursuant to the agreement in which it was sold. Another example of this type of claim is also listed below. There is a scenario with this type of claim when the return of an installment account **is not** considered an overpayment. This will be verified by the FAET Group or TTB personnel prior to allowing claim.

Examples of this type of claim:

- Overpayment occurs when manufacturer who has previously taxpaid and sold an installment account and is now repurchasing the account pursuant to the agreement in which it was sold. The credit or refund to the seller will be proportionate to the part of the consideration paid or credited to the purchaser of the installment account.
 - For an example of when return of an installment account is not considered an overpayment, see 27 CFR 53.183(b).
1. Legal Authority for this type of claim is 26 U.S.C. 6416(b)(5).
 2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **does not apply** to these types of claims.
 3. Evidence Required To Support This Type of Claim:
 - a. Statement required by 27 CFR 53.183(c) for Return of Accounts:
 - (1) The name and address of the person to whom the installment account was sold.
 - (2) The amount of tax due under 26 U.S.C. 4216(d)(l) by reason of the sale of the installment account, the amount of tax paid under 26 U.S.C. 4216(d)(l) with respect to the sale, and the date of payment.
 - (3) The amount for which the installment account was sold.
 - (4) The amount which was repaid or credited to the purchaser of the account by reason of the return of the account to the person claiming the credit or refund, and
 - (5) The fact that the amount repaid or credited to the purchaser of the account was so repaid or

credited pursuant to the agreement under which the account was sold, and

- (6) The fact that the account was returned to the manufacturer pursuant to that agreement.

4. No interest shall be paid on this type of claim.

5. PRICE READJUSTMENT CLAIMS

This type of claim is a price readjustment claim. There are 7 situations listed below where price readjustments may occur. There are also requirements listed for a price readjustment. These must to be met prior to allowance of claim.

Examples: Situations where price readjustment may occur:

- a. Return of an article
- b. Repossession of an article
- c. Return or repossession of the covering or container of an article
- d. A bona-fide discount
- e. Rebate
- f. Allowance against the price at which an article was sold
- g. Local advertising charges under 27 CFR 53.175

Requirements for a Price Readjustment (See 27 CFR 53.174):

- a. Person who paid the tax repays part or all of the purchase price in cash to the vendee or credits the vendee's account for part or all of the purchase price, or
- b. Person who paid the tax directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

- c. To be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the credit or payment purports to adjust.
- d. The amount of the credit or refund of the readjusted price is proportionate to the price of the article which is repaid to the purchaser.
- e. If the readjustment was actually made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may be either the price as so readjusted or on the original sales price and a credit or refund claimed in respect of the price readjustment.

- 1. Legal Authority for this type of claim is 26 U.S.C. 6416(b)(1).
- 2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **does not apply** to this type of claim.
- 3. Evidence Required To Support This Type of Claim:

Statement under 27 CFR 53.176:

- (a) Describing the circumstances which gave rise to the price adjustment,
 - (b) Identifying the article in respect of which the price adjustment was allowed,
 - (c) Showing the price at which the article was sold, the amount of tax paid in respect of the article, and the date on which the tax was paid,
 - (d) Giving the name and address of the purchaser to whom the article was sold, and
 - (e) Showing the amount repaid to the purchaser or credited to the purchaser's account.
- 4. No interest shall be paid on this type of claim.

6. CLAIMS FILED BY EXPORTERS (NOT THE MANUFACTURER)

This type of claim is the most common type of claim filed – claim for refund of tax that has been paid on exported firearms - filed by exporters who are *not the manufacturer*. This type of claim can be filed by an entity other than the taxpayer (i.e., the purchaser, exporter or shipper). (See 27 CFR 53.184.)

1. Legal authority for this type of claim is 26 U.S.C. 6416(c).
2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **does not apply** to this type of claim.
3. Evidence Required To Support This Type of Claim (as required by 27 CFR 53.133 and 53.184):
 - a. Proof of Exportation – Need one of the following:
 - (1) A copy of the export bill of lading issued by the delivering carrier (must bear a signature).
 - (2) A certificate by the agent or representative of the export carrier showing actual exportation of the articles. An example of this would be an airway bill or shipper's declaration (must bear a signature).
 - (3) A certificate of landing signed by a customs officer of the foreign country to which the article was exported.
 - (4) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article (must bear a signature) – or
 - (5) Where a department or agency of the United States Government is unable to furnish any one of the foregoing four types of proof of exportation, a statement or certification on the department or agency stationery, executed by an authorized officer, that the listed or identified articles have, in fact, been exported.
 - b. Statement of Manufacturer's Vendee. In any case where the manufacturer is not the exporter, the manufacturer must

have in its possession a statement from the vendee to whom the manufacturer sold the article stating the following:

- i. Date statement was executed.
- ii. Name and address of manufacturer's vendee (if other than the person executing statement).
- iii. Certificate of registry number held by vendee.
- iv. Specify article(s) purchased tax-free, by whom purchased, and date of purchase.
- v. Statement that article(s) was either exported in due course by the vendee or was sold to another person who in due course exported the article(s).
- vi. Name and address of vendee who will maintain possession of the proof of exportation documents, description of the documents, and statement that vendee will maintain documents for 3 years and make them available to TTB for inspection.
- vii. Statement that a previous statement has not been executed in respect of the articles covered by this statement and that fraudulent use of this statement may subject person executing statement and all parties making fraudulent use of statement to all applicable criminal penalties under the Code.
- viii. Name, signature, title and address of individual executing certificate.

(Note: TTB F 5600.36, Statement of Manufacturer's Vendee, when fully completed, contains all necessary information for the above properly executed statement.)

- c. Waiver Statement. No claim for refund of any overpayment of tax in this situation can be allowed unless the exporter or shipper submits with the claim – the above proof of exportation and a statement, signed by the person who paid the tax, showing:
 - (1) That the person who paid the tax waives the right to claim credit or refund of the tax, and
 - (2) The amount of tax paid on the sale of the article and date of payment.
- 4. No interest shall be paid on this type of claim.
- 5. Most common reasons for denial of an export claim:
 - a. Claimant is not the actual exporter.
 - b. No proof or not sufficient proof of exportation.
 - c. Articles being claimed are not considered firearms/ammunition under the Internal Revenue Code (IRC).
 - d. Claim is not timely filed for all or some of the articles being claimed.
- 6. Other Pertinent Information:

The waiver by the manufacturer is mandatory and must be obtained by the exporter/shipper in order for the claim to be approved. The FAET law and regulations do not mandate that a manufacturer who pays the FAET upon its sale of firearms/ammunition must provide an exporter or shipper with this information. Although not expressly stated in the regulations, the choice of whether to waive its right to make a claim, or file a claim for credit or refund itself, is left to the manufacturer's discretion.

7. SPECIAL RULE CLAIM – 26 U.S.C. 6416(a)(3).

This type of claim comes under the special rule provided by 26 U.S.C. 6416(a)(3). This rule is a very narrow one and is limited to the specific set of facts outlined below. This type of claim occurs when the FAET has been paid upon sale of article(s) by the manufacturer, producer or importer – and then – such article(s) are sold to a subsequent manufacturer or producer before being used.

The tax paid shall be deemed an overpayment by such subsequent manufacturer or producer if the following set of facts exist:

- a. The manufacturer, producer, or importer sells the article to an “ultimate purchaser” and pays the tax on an article, i.e. tax-paid sale;
 - b. TTB has subsequently determined that the article is not taxable; and
 - c. The “ultimate purchaser” still has the article in their inventory and is holding it out for sale.
1. Legal authority for this type of claim is 26 U.S.C. 6416(a)(3).
 2. The Condition to Allowance Rule under 26 U.S.C. 6416(a) **does not apply** to this type of claim.
 3. Information Pertinent To This Type of Claim:
 1. The term “ultimate purchaser” is defined for this type of claim to include a wholesaler, jobber, distributor, or retailer who:
 - a. On the 15th day after the date of such determination, holds such article for sale; but
 - b. Only if the claim for credit or refund is filed on or before the date for filing the return for the first period which begins more than 60 days after the date on such determination.
 2. The manufacturer, producer, or importer must obtain and submit a supporting statement from each ultimate purchaser, i.e. wholesaler, jobber, distributor, or retailer, whose articles are covered by the claim, identifying the total inventory, by model number and quantity, or all

such purchases tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination that the article was not subject to the tax. (27 CFR 53.172(a)(3)(ii)(B)).

3. An article in inventory does not include any article, title or possession of which was transferred to any person for purposes of consumption unless the entire purchase price was repaid or credited to the person's account and the sale was rescinded or any such article purchased by an ultimate purchaser, i.e. wholesaler, jobber, distributor, or retailer, as a component part of, or in connection with, another article. (27 CFR 53.172(a)(3)(ii)(C)).
4. If the article was in transit at the first moment of the 15th day after the date of determination that the article was not subject to tax, it is regarded as being held by the person to whom it was shipped. However, if title to the article did not pass until delivered to the person, the article is deemed to be held by the shipper. (27 CFR 53.172(a)(3)(ii)(C)).
4. No interest shall be paid on this type of claim.