



1992 VOLUME 1



newsletter

Federal Firearms Licensees Information Service provided by the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms • Washington, D. C.

“STRAW PURCHASES” OF FIREARMS

Questions have arisen concerning the lawfulness of firearms purchases from licensees by persons who use “straw purchasers” (another person) to acquire the firearms. Specifically, the actual buyer uses the straw purchaser to execute the Form 4473 purporting to show that the straw purchaser is the actual purchaser of the firearm. In some instances, a straw purchaser is used because the actual purchaser is prohibited from acquiring the firearm. That is to say, the actual purchaser is a felon or is within one of the other prohibited categories of persons who may not lawfully acquire firearms or is a resident of a State other than that in which the licensee's business premises is located. Because of his or her disability, the person uses a straw purchaser, who is not prohibited from purchasing a firearm from the licensee. In other instances, neither the straw purchaser nor the actual purchaser is prohibited from acquiring the firearm.

In both instances, the straw purchaser violates Federal law by making false statements on Form 4473 to the licensee with respect to the identity of the actual purchaser of the firearm, as well as the actual purchaser's residence address and date of birth. The actual purchaser who utilized the straw purchaser to acquire a firearm has unlawfully aided and abetted or caused the making of the

false statements. The licensee selling the firearm under these circumstances also violates Federal law, if the licensee is aware of the false statements on the form. It is immaterial that the actual purchaser and the straw purchaser are residents of the State in which the licensee's business premises is located, are not prohibited from receiving or possessing firearms, and could have lawfully purchased firearms from the licensee.

This article does not purport to cover sales to persons who purchase firearms with the intent of making gifts of such firearms to other persons. In instances such as this, the person making the purchase is indeed the true purchaser. There is no straw purchaser in these instances. The use of gift certificates would also not fall within the category of straw purchases. The person redeeming the gift certificate would be the actual purchaser of the firearm and would be properly reflected as such in the dealer's records.

FIREARMS AND AMMUNITION EXCISE TAX - HISTORY OF THE PITTMAN- ROBERTSON ACT

The Federal Aid in Wildlife Restoration Act observes its 55th birthday on September 2, 1992 amid ample evidence that America's wild birds and animals, after a long era of scarcity, are prospering again and their numbers growing.

This happy outcome was by no means assured when the landmark Federal-State cooperative program began. Deer, wild turkeys, and many waterfowl species were only some of the creatures that had vanished from great parts of the country. The legendary abundance of wild game in earlier times was gone, potentially forever, while, money and skills to reverse the downward trend were scarce.

The conservation leaders who addressed this wildlife crisis recognized that no one could offer a quick fix or a free ride. Human distress was severe in 1937 after years of economic depression and drought, putting heavy pressure on all financial and natural resources.

Looking for an answer, conservationists united behind two basic principles drawn from the earliest days of the Republic. Let those who stand to benefit the most be the ones to shoulder as much of the cost as possible, and give the States authority to do the needed work with just enough Federal monitoring to assure high standards of quality.

An existing Federal excise tax on sporting arms and ammunition was before Congress for renewal that year. Wildlife advocates, nearly all of them hunters and supported strongly by the taxed industry, proposed that the levy be continued. Provided, that all receipts be earmarked for wildlife restoration projects to be designed and conducted by the States, instead of the money being deposited in the Treasury general fund, with the States sharing the costs of wildlife restoration projects, using funds from their hunting license fees.

From a modest beginning, the Pittman-Robertson program has grown with the economy and the human population of our country. It has channeled in excess of \$1.7 billion in Federal excise tax receipts, augmented by some \$600 million from the States, into activities to restore wildlife.

The projects include State acquisition of acreage needed to bring wildlife back, research into wildlife requirements and problems, active management of habitats, and development of scientific ways to enable wildlife and people to share our land in harmony. The program has strengthened State governments and built wildlife management into a respected profession. For the past 20 years it also has been training some 700,000 hunters annually in safety and sportsmanship, substantially lowering the hunting accident rate and promoting sound conservation ethics. It has stimulated the economy of rural communities all across the land and given healthful outdoor recreation to millions.

But most of all, Pittman-Robertson has restored to abundance many of America's most beloved wild mammals and birds which are so much a part of our national heritage. And the beneficiaries include not only the game species but also many which are not hunted, from songbirds to bald eagles, from sea otters to prairie dogs.

All this has been accomplished without resorting to the use of general tax revenues. Those who purchase firearms, ammunition, and in recent years, archery equipment, are responsible for these achievements through the payment of the Federal manufacturers excise tax on those articles.

PAYMENT OF EXCISE TAXES BY GUNSMITHS

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a number of inquiries from gunsmiths regarding the Federal manufacturers excise tax on firearms, shells and cartridges. This article is intended to provide information regarding requirements for payment of such excise tax by persons engaged in gunsmithing operations.

Some persons may believe that ATF is collecting a new tax on custom firearms, or is not following previously established guidelines in collecting the tax. The Federal manufacturers excise tax on firearms, shells and cartridges is not new; how-

The FFL NEWSLETTER is published by the Bureau of Alcohol, Tobacco and Firearms, Firearms and Explosives Operations Branch, P.O. Box 50239, Washington, DC 20091. Published semiannually. Letters to the editor are encouraged.

Editor Robert Trainor

ever, it is a new responsibility for ATF to collect the tax which was assumed from the Internal Revenue Service (IRS) on January 1, 1991. The IRS previously had responsibility for this excise tax and still has responsibility for many other manufacturers excise taxes.

If the manufacturers excise tax sounds new to some taxpayers, this is probably due to the fact that ATF has more direct lines of communication with the firearms industry than did IRS. ATF will continue to follow the interpretations of the IRS concerning this excise tax. ATF positions with regard to gunsmiths are all based on longstanding IRS rulings and regulations. In fact, one condition to ATF assuming responsibility for the firearms excise tax was that ATF would adhere to previously issued IRS rulings in this area. The Secretary of the Treasury imposed this requirement to ensure that all the manufacturers excise taxes would be administered in a consistent manner.

We believe that an overall view of how the firearms excise tax applies to gunsmiths will address many of the questions raised by gunsmiths. In general, two events must occur for the excise tax, imposed by section 4181 of the Internal Revenue Code, to apply to the alteration or modification of any firearm. First, an act of manufacture involving a firearm must occur. Second, the person who is responsible for the act of manufacture must sell the firearm or use it for business use.

The regulations in 27 CFR Part 53.11 define what is manufacturing through the definition of manufacturer. The term manufacturer is defined to include "any person who produces a taxable article from scrap, salvage, or junk material, or from new or raw material, by processing, manipulating, or changing the form of an article or by combining or assembling two or more articles." Therefore, work by a gunsmith on an existing firearm will generally be considered to be manufacture if the alterations materially change the firearm so that a different article results. Modifications to an article that change the form of the article or significantly improve or significantly change the function of an article also amount to manufacture. Modification of a firearm by repairing or replacing existing parts would not generally change the form of the article and would not amount to manufacture. Bluing or black anodiz-

ing in refinishing an existing firearm also would not change the form of a firearm and would generally not amount to manufacture.

The IRS has issued a number of excise tax rulings concerning alterations made to firearms and whether the alterations amount to manufacture. Overall, the rulings contrast manufacture with repair or replacement of existing parts. If existing parts of a firearm are replaced, refinished, or repaired, no manufacture takes place. However, if parts are added to a frame, receiver, or action so as to make a complete firearm, this would generally be manufacture. Additionally, when custom firearms are produced from new or used firearms and the custom firearms are a new and different firearm, then manufacture has taken place. An example of custom firearms is when surplus military firearms are "sporterized." The second part of determining whether the firearms excise tax applies concerns whether the person who is responsible for the act of manufacture has sold or used the firearm. Let us assume that a gunsmith's alterations to a firearm for a customer amount to manufacture. In a situation where a customer supplies a firearm to a gunsmith for modification, the customer is usually considered to be the manufacturer for excise tax purposes. The customer is considered to be the manufacturer because he directs what type of modification is to be done to the firearm and he retains title to the firearm while it is being modified. Even though the gunsmith performs the physical modifications to the firearm, he would not usually be considered the manufacturer for excise tax purposes in this situation.

A different result occurs where the alterations are made in connection with the sale of the firearm by the gunsmith. Where the gunsmith is selling the firearm to the customer, and in connection with the sale, the gunsmith performs alterations that constitute manufacture, the sale of the altered firearm results in tax liability. The clearest example of this situation is where the gunsmith offers to customize a firearm to the customer's specifications prior to sale. However, it has been the longstanding position of the IRS in excise tax matters that tax liability cannot be avoided by merely breaking the transaction into two parts, *i.e.*, by selling the firearm and subsequently performing the manufacture.

If the manufacture is done in connection with the sale of a firearm, the gunsmith is liable for tax, whether he performs the acts of manufacture before or after the sale. In the latter instance, ATF will adhere to IRS rulings in this area and blend the sale and the subsequent manufacture into one transaction. The substance of the transaction will control, not the form.

Where the gunsmith is not selling the firearm to the customer, or in circumstances where the sale and subsequent alterations are truly separate transactions, the customer is deemed to be the manufacturer. In these situations, tax liability, if any, would fall on the customer.

After it has been determined that manufacturing has occurred and who is the manufacturer for firearms excise tax purposes, does the manufacturer owe firearms excise tax? The answer to this question depends upon what the manufacturer does with the firearm after the gunsmith has completed his work.

If the manufacturer sells the firearm before using it, he is liable for the excise tax. If the manufacturer uses the firearm for personal, not business, use after delivery from the gunsmith, no tax liability is incurred. The regulations specifically provide that the tax does not apply to a firearm that has been manufactured for personal use. (27 CFR 53.112).

If the manufacturer uses the firearm in the operation of any business in which he is engaged, tax liability would be incurred. (26 U.S.C. 4218 and 27 CFR 53.112(a)). Taxable use includes the use of firearms as sales samples.

It should be noted that firearms excise tax is applied on the sales of complete firearms. The term firearm is defined as "any portable weapons, such as rifles, carbines, machineguns, shotguns, or fowling pieces, from which a shot or bullet, or other projectile may be discharged by an explosive." (27 CFR 53.11). A receiver for a firearm is not a complete firearm and is not subject to tax.

However, a manufacturer who sells a firearm or ammunition in a knockdown condition, which is complete as to all component parts, will be liable for the tax. Liability for tax will be incurred

whether the component parts of the firearm are sold in one transaction or a series of separately invoiced transactions.

Pursuant to 26 U.S.C. 4181, tax is calculated on the specified percent of the price for which the article is sold. The tax rate is 10 percent for pistols and revolvers, and 11 percent for all other firearms and ammunition.

If a gunsmith acquires title to a firearm, performs modifications on the firearm which amount to manufacture, and then sells the firearm, tax would be calculated on the price for which he sold the firearm. If the gunsmith previously sold the firearm to the customer and subsequently further manufactures the firearm at the customer's request, the gunsmith will be liable for excise tax on his manufacture, if the manufacture is performed in connection with the original sale. Under these circumstances, the tax will be based on the price charged to the customer for the original sale of the firearm plus the charges for the subsequent modifications.

Section 4216(a) of the Internal Revenue Code and the regulations issued thereunder also provide for certain inclusions and exclusions from the price which must be taken into account when determining the tax basis. See 26 U.S.C. 4216(a) and 27 CFR 53.91 and 53.92 for the inclusions and exclusions which must be applied to the price to determine an adjusted sale price.

Ordinarily, the tax rate is applied to the adjusted sale price to determine the amount of a manufacturer's tax liability on each firearm manufactured. However, if an article is sold only at retail (*i.e.*, directly to consumers), section 4216(b)(1)(C) of the Internal Revenue Code requires that a constructive sale price be determined. The constructive sale price for firearms sold at retail by manufacturers who do not sell like articles to wholesale distributors is 75 percent of the actual selling price, after taking into account the inclusions and exclusions set forth above.

Most gunsmiths sell directly to consumers, with no sales to wholesale distributors. Assuming this is the case in the examples provided above, the tax rate of 10 or 11 percent would be applied to

75 percent of the adjusted sale price to determine the amount of the gunsmith's liability for each gun manufactured.

If any person, such as the manufacturer, importer or producer, had previously paid excise tax on a firearm that a gunsmith subsequently customizes and sells, the gunsmith may be eligible to claim a refund, or take a credit on the excise tax return for the tax previously paid. (See 27 CFR 53.180 - 53.182, and 53.185 for details on how to claim a refund, or take a credit.)

A gunsmith who intends to purchase firearms for further manufacture may want to register as a tax-free purchaser to receive the firearms without payment of tax. ATF Form 5300.28 is used as the application to register. This will eliminate the gunsmith's payment of the excise tax when purchasing the firearm from the original manufacturer and the need to claim refunds or take tax credits.

In general, the excise taxes for firearms and ammunition are paid to the Bureau of Alcohol, Tobacco and Firearms with a quarterly tax return (ATF F 5300.26), and, if the taxpayer incurs specified amounts of tax liability, with a monthly or semi-monthly deposit coupon (ATF F 5300.27). The addresses for mailing tax returns and deposits are listed in the instructions on the tax return (ATF F 5300.26). All firearms and ammunition excise taxpayers, even if no liability is incurred, must file quarterly tax returns. Deposit requirements are explained in the instructions on the tax return (ATF F 5300.26).

Please contact your nearest ATF office if you have any further questions.

REGISTRATION FOR TAX-FREE SALES

Persons who pay the manufacturers excise tax on firearms or ammunition must have valid Certificates of Registry prior to making sales tax-free under Section 4221 of the Internal Revenue Code. Tax-free sale of firearms and ammunition by the manufacturer, importer or producer under Section 4221(a), is permitted under the following circumstances:

1. For use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture.
2. For export, or for resale by the purchaser to a second purchaser for export.
3. For use by the purchaser as supplies for vessels or aircraft.
4. To a State or local government for the exclusive use of a State or local government.
5. To a nonprofit educational organization for its exclusive use.

Section 4222 of the Internal Revenue Code provides that tax-free sales may not be made under section 4221 unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered. However, section 4222(b) provides that State and local governments are not required to register if such governments comply with regulations relating to the use of exemption certificates. The regulations at 27 C.F.R. § 53.141 address the use of exemption certificates by State and local governments purchasing articles direct from the manufacturer for their exclusive use.

Manufacturers and importers who sell firearms and ammunition tax-free without registering or otherwise complying with the requirements of the law and regulations are liable for excise tax, applicable penalties, and interest on the sale of the articles.

Also, the Certificate of Registry issued by the IRS or ATF is not transferable to another person. Such a transfer could occur as a result of a change in the control in the business of a Certificate holder. Any changes in business control should be reported within 30 days to your Regional Director (Compliance). Other requirements to be met for tax-free sales are found in the regulations, Subpart K of 27 CFR Part 53.

CUSTOMER'S TAX LIABILITY FOR RELOADED AMMUNITION

Under certain circumstances the excise tax liability for reloaded ammunition falls upon the customer, not the reloader. Section 27 CFR 53.11 states, in part:

"A person who reloads used shells and cartridge casings is a manufacturer of shells or cartridges within the meaning of section 4181 if such reloaded shells or cartridges are sold by the reloader. However, the reloader is not the manufacturer of shells or cartridges if, in return for a fee and expenses, he reloads casings or shells or cartridges submitted by a customer and returns the reloaded shells or cartridges with the identical casings provided by the customer to that customer. Under such circumstances, the customer would be the manufacturer of the shells and cartridges and may be liable for tax on the sale of articles. See section 4218 of the Code and 53.112."

Section 53.112(b) of the regulations provides that tax shall not attach where an individual manufactures an article for personal use. Thus, if an individual has a reloader manufacture ammunition from casings provided by the individual, the individual will not incur tax if the reloaded ammunition is manufactured for his personal use. However, a person will be liable for the tax if he sells the reloaded shells or cartridges or uses them for other than personal use. For example, the use of the reloaded ammunition in a business operated by the individual (e.g., shooting range) would result in excise tax liability under Section 4181 of the Internal Revenue Code.

CALIFORNIA - LAW CHANGE ADVISORY

Effective January 1, 1992, all firearms designated as antiques, and only rifles and shotguns designated as curios or relics by the Bureau of Alcohol, Tobacco and Firearms (ATF), retained the exemptions for these firearms which have been provided under California State Penal Code

Section 12001(e). Specifically, these firearms are exempt for the purposes of dealer licensing requirements for their sale, lease, or transfer; requirement for submission of reporting forms and waiting periods by dealers; and requirements for private party sales.

Therefore, licensed collectors (who are not also licensed dealers) cannot receive curio & relic handguns directly. The collector must have the handgun delivered to a licensed dealer. The collector would then have to complete the Dealer Record of Sale form and wait 15 days before obtaining the firearm from the dealer.

California law is also interpreted to require licensed dealers who transfer a firearm to their personal collection to complete a Dealer Record of Sale form and wait 15 days before completing the transfer.

For further information, contact the California Department of Justice, Sacramento, California (916) 739-3510.

TRANSFER OR DUPLICATION OF SERIAL NUMBERS ON NATIONAL FIREARMS ACT FIREARMS

ATF has received a number of questions about the transfer of a serial number from one National Firearms Act (NFA) firearm to another. Some of these questions also involved the duplication of serial numbers.

A misunderstanding apparently exists that the serial number of a registered NFA firearm may be transferred to another NFA firearm without any additional registration or tax. The usual justification is that the original firearm is damaged beyond repair and is being replaced.

This scenario is not accurate. The originally registered firearm is the one that appears in the National Firearms Registration and Transfer Record (NFRTR). The fact that a firearm has been damaged does not effect its registration status unless the damage has resulted in the

destruction of the firearm. The NFA Branch must then be notified of the destruction so that the NFRTR may be annotated.

The creation of any replacement would constitute the making of a new NFA firearm and approval must be granted before the act could occur or, if being done by a qualified manufacturer, a Form 2 notice must be filed to effect the registration of the new firearm. Any making or transfer tax liability incurred must be satisfied.

In addition, any machinegun manufactured after May 19, 1986 would be subject to the restrictions of 18 U.S.C. 922(o), which precludes private possession.

We have also encountered situations where the serial number and other identification markings are transferred to another firearm because the original type of machinegun may have had little value and another type may be worth much more.

In these situations, ATF may pursue criminal investigation and prosecution for the following violations of the National Firearms Act: receipt or possession of a firearm made in violation of the Act; making a firearm in violation of the Act; and the making of a false entry on an application, return or record. In addition, if a machinegun is involved, there would be a violation of Title 18, United States Code, section 922(o). The firearms involved in the violation are subject to seizure and forfeiture.

MARKINGS ON FIREARMS

ATF has recently encountered situations involving problems with identifying firearms on which the manufacturer's markings are non-existent or hidden. We have found that the problems with hidden markings primarily exist with firearms manufactured in a crude form and later assembled to a finished form by a subsequent manufacturer.

The regulations in 27 CFR 178.92, require each licensed manufacturer or importer to legibly identify each firearm manufactured or imported by conspicuously placing a serial number on the frame or receiver and by conspicuously placing

other required markings (manufacturer's name, city and state, model, caliber or gauge) on the frame, receiver, or barrel. These markings must be engraved, cast, stamped (impressed) or otherwise placed in a manner not susceptible of being readily obliterated, altered or removed.

The required markings must be placed so that they are conspicuous regardless of the stage of completion of the firearm, that is, they must be conspicuous from the initial stage as a frame or receiver through the manufacturing process to completion and must be conspicuous on an assembled firearm. The markings cannot be hidden by the assembly of the firearm.

While these requirements apply to any firearms manufactured or imported, including National Firearms Act (NFA) firearms (machineguns, silencers, etc.), 27 CFR 179.102 also prescribes marking requirements for NFA firearms.

With respect to NFA weapons, Federal law in 26 U.S.C. 5861(h) provides that it shall be unlawful to obliterate, remove, change, or alter the serial number or other identification required, and it shall be unlawful to receive or possess a firearm having the serial number or other required information obliterated, removed, changed, or altered.

With respect to all firearms, the Gun Control Act, specifically 18 U.S.C. 922(k) makes it unlawful to receive or possess a firearm which has had the serial number removed, altered, or obliterated.

We suggest that an improperly marked firearm (1) be returned to the manufacturer or importer (subsequent to approved application for NFA firearms) so that the required markings may be properly placed on the firearm, or (2) the licensee possessing the firearm should restamp the proper markings on the firearm in a visible location, but only after the licensee contacts the local ATF office for approval.

Should you have any questions about the marking requirements for firearms, please contact your local ATF (Compliance Operations) office.

STORAGE OF NFA FIREARMS

This is a reminder that licensed firearms dealers may not take in NFA firearms registered to other persons for either temporary storage or consignment sale purposes. Such unapproved possession violates 26 USC 5861, and subjects the weapon to seizure and forfeiture.

If the lawful possessor of a registered NFA weapon needs to temporarily store the weapon (e.g. for security purposes during a temporary absence, such as a vacation), he should store the weapon in such manner that only the registered owner has access to the weapon. For example, in a safe deposit box at a bank. The weapon should not be left in the custody of another person since this would constitute a transfer of the weapon. For more information, contact the NFA Branch at Bureau of Alcohol, Tobacco and Firearms, NFA Branch, Washington, DC 20226, or (202) 927-8330.

REMINDER TO NFA WEAPONS LICENSEES

Those who manufacture, import or deal in NFA weapons must pay Special Occupational Tax (SOT). Please be sure that the information (name, address, etc.) shown on your firearms license is the same as that shown on your SOT return. For example, if your license reflects a trade name, your SOT return should include that trade name.

Examiners in the NFA branch must verify both SOT and licensed status before processing weapons transfer applications. Therefore, having the same information on both documents will expedite the process.

FIREARMS & EXPLOSIVES TELEPHONE NUMBERS

Firearms & Explosives Division	(202) 927-8300
Firearms & Explosives Operations Branch	(202) 927-8310
Firearms & Explosives Imports Branch	(202) 927-8320
National Firearms Act Branch	(202) 927-8330
Firearms & Explosives Licensing Center	1-(800) 366-5423

SALES OF FIREARMS TO LAW ENFORCEMENT OFFICERS

Section 925(a)(1) of the Gun Control Act of 1968 exempts law enforcement agencies from the transportation, shipment, receipt, or importation controls of the Act when firearms are to be used for the official business of the agency.

If a law enforcement officer is issued a certification letter on the agency's letterhead signed by a person in authority within his agency stating that the officer will use the firearms in performance of his official duties, then that officer specified in the certification may purchase a firearm from an FFL regardless of the State in which he resides or in which the agency is located. The seller is not required to prepare a Form 4473 covering such a sale; however, the transaction must be entered in the permanent record. The certification letter from the officer must be kept in your files.

ATF considers the following as persons having the authority to make certifications that the law enforcement officer purchasing the firearms will use the firearms in performance of his official duties.

1. In a city or county police department, the director of public safety, or the chief or commissioner of police.
2. In a sheriff's office, the sheriff.

3. In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.
4. In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

ATF would also recognize someone signing on behalf of a person of authority provided there is a proper delegation of authority and overall responsibility has not changed in any way.

Further, sales to individual law enforcement officers are not exempt from the Federal excise tax on the sale of firearms and ammunition. Manufacturers and/or importers may make tax-free sales to State and local government agencies, provided, the requirements for tax-free sales under 27 CFR 53.135(c) have been met.

ATF HOTLINE

In March of 1992, ATF established a new national toll-free hotline to report criminals in possession of firearms, trafficking in firearms, and to provide information about armed drug traffickers. By calling 1-800-ATF-GUNS, citizens can (anonymously, if they so choose) report suspected illegal gun violations, including armed gang and drug activity. Calls are routed by area code to the nearest ATF law enforcement field division.

ATF WESTERN REGION REORGANIZATION

The Western Region of Compliance Operations has consolidated and reorganized their field offices. The Santa Rosa Office has become a Post of Duty under the San Francisco Area Office, and the Fresno Area Office has become a Post of Duty under the San Jose Area Office. The State of Utah is now the responsibility of the Sacramento Area Office, and the Los Angeles Area Office now has responsibility for the entire county of Los Angeles. A detailed listing of the changes may be obtained by contacting the Western Regional office at (415) 744-9425 and requesting a copy of Industry Memorandum W-91-13.

DELEGATIONS OF AUTHORITIES

The Regional Directors (Compliance) of the North Atlantic, Southeast, Midwest, Southwest and Western Regions have delegated their authorities to deny an applicant a Federal firearms license and to revoke a Federal firearms license under 27 CFR 178.71 and 178.73, respectively, to the Chiefs, Technical Services.

SUPREME COURT RULES ON THOMPSON/CENTER ARMS CASE

On June 8, 1992, the Supreme Court held in United States v. Thompson/Center Arms Co., that a pistol combined with a kit for converting the pistol into a rifle was not a weapon regulated by the National Firearms Act (NFA). Thompson/Center manufactured the "Contender" pistol and a kit with a shoulder stock and a 21-inch barrel that could be used to convert the pistol into a rifle. The Federal Circuit had held that the pistol and kit were not subject to the Act because they had never been assembled as a regulated short-barreled rifle. The Supreme Court affirmed the decision of the lower court, but on much narrower grounds. The Supreme Court held that since all of the parts in the Contender pistol kit could be used in the assembly of either an unregulated pistol or unregulated rifle, the combined packaging of the pistol and kit did not result in the "making" of an NFA weapon. Therefore, such a combination of parts was not subject to the tax and registration provisions of the National Firearms Act.

While affirming the Court of Appeals decision, the Supreme Court was careful to distinguish the Thompson/Center weapon from other combinations of unassembled parts which could only result in a short-barreled rifle or other regulated firearm. Since the latter weapons are still subject to the National Firearms Act, this decision will have a limited impact on the enforcement of the Act.

In summary, what this means is that any person who possesses a Contender pistol kit and who assembles the parts into a short-barreled rifle (i.e. with 10 inch barrel and stock) has made an NFA weapon, subject to the making tax and registration.

As further examples, any rifle possessed together with parts that could only be used to convert the weapon into a machinegun would be covered by the NFA. A pistol with an attachable shoulder stock would be considered an NFA weapon. Also, a semiautomatic Uzi with a 16-inch barrel, together with a short barrel, would be covered by the NFA.

Finally, the court decision has no impact on the Bureau's position that the possession of a collection of parts from which one can assemble other types of NFA weapons (such as a machinegun or a destructive device or an "any other weapon") still constitutes the possession of an NFA weapon requiring registration, subject to the appropriate making and transfer taxes, whether or not assembled.

If you have any questions on this matter, please address them to the National Firearms Act Branch, 650 Massachusetts Ave., N.W., Washington, DC 20226.

**SCHEME TO CIRCUMVENT THE
SEMIAUTOMATIC ASSAULT RIFLE
IMPORT BAN RESULTS IN
CONVICTIONS FOR
CONSPIRACY TO DEFRAUD THE
UNITED STATES AND MAIL FRAUD**

On March 25, 1992, in United States v. Nevius, et al, a Federal jury in Ohio convicted Federal firearms licensee F.J. Vollmer and Company, Inc. of Bloomington, Illinois, of one count of conspiracy to defraud the United States and three counts of mail fraud for its role in a scheme to acquire over 70 Steyr AUG-SA semi-automatic assault rifles and receivers in circumvention of the import ban on such weapons.

F.J. Vollmer and Company were charged with conspiring with an officer of the Illinois National Guard and others to obtain the semiautomatic assault rifles from Gun South, Inc., a licensed importer in Trussville, Alabama.

Pursuant to a court ordered settlement of litigation between Gun South, Inc., and ATF, these weapons may only be sold directly to governmental entities or to individual law enforcement officers for use in their official duties. Each individual purchaser must certify to ATF that the weapon is being purchased for official use and not for the purpose of transfer or resale. A supervisory official must also provide the same certification.

Between June of 1990 and August of 1991, the defendants submitted orders through the mails for the weapons containing false certifications by numerous National Guardsmen. The certifications falsely attested that the weapons were to be used in the course of the guardsmen's official duties and were not being purchased for the purpose of transfer or resale. However, upon receipt of the weapons, generally at an Illinois National Guard armory, the rifles were immediately transported in their original shipping containers to F.J. Vollmer and Company's premises. In turn, F.J. Vollmer and Company offered the rifles for sale to the public.

**REQUEST FOR
ASSISTANCE
NEW CASTLE INDIANA
POLICE
DEPARTMENT**

The New Castle Indiana Police Department and the Henry County Prosecutor's office are requesting information on any firearms sold to Wesley W. Crandall Jr., D.O.B. 4/27/50, SSN 309-56-5864. Mr. Crandall was the victim of a homicide and several firearms were stolen during the commission of the crime.

Please report any firearm sales to Mr. Crandall from 1986 through February 1991 to Captain Butch Baker, New Castle Police Department, 227 North Main Street, New Castle, Indiana 47362, (317) 529-4890.