

§ 46.3

27 CFR Ch. I (4-1-02 Edition)

claimant for the purpose of paying the tax.

Person. An individual, a trust, estate, partnership, association, company, or corporation.

Tax. Any tax imposed by 26 U.S.C. chapter 52, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under such chapter, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 46.3 Applicability to certain credits or refunds.

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

(a) Any claim for drawback,

(b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, lost, or destroyed, and

(c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an article seized and forfeited, or destroyed, as contraband.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-42, 42 FR 8372, Feb. 10, 1977]

§ 46.4 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

(a) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(b) No understanding or agreement exists for any such relief or shifting, and

(c) If he has neither sold nor contracted to sell the articles involved in such claim, he agrees that there will be no such relief or shifting, and furnishes bond as provided in § 46.10.

§ 46.5 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

(a) That he bore the ultimate burden of the amount claimed, or

(b) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or

(c) That (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the appropriate ATF officer the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b) of this section.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.6 Requirements for persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

(a) File a claim, as provided in § 46.7,

(b) Comply with any other provisions of law or regulations which may apply to the claim, and

(c) If, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved

in the claim, file a bond on ATF Form 5620.10, as provided by § 46.10.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

CLAIM PROCEDURE

§ 46.7 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with instructions for the form. (For provisions relating to hand-carried documents, see § 70.304 of this chapter.) The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the appropriate ATF officer of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by § 46.8. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

[T.D. 7008, 34 FR 3672, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-251, 52 FR 19342, May 22, 1987; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 46.7, must set forth or contain the following:

(a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.

(b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.

(c) The written consent of the owner to allow the refund or credit to the claimant (where the owner of the article on which the tax was paid has furnished the claimant the amount claimed for the purpose of paying the tax).

(d) If the claimant or the owner, as the case may be, has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant or the owner, as the case may be, agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.

(e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and, if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions of allowance set forth in § 46.5.

The regional director (compliance) may require the claimant to furnish as a part of the claim such additional information as he may deem necessary.

[T.D. ATF-42, 42 FR 8372, Feb. 10, 1977]

§ 46.9 Time for filing claim.

No credit or refund of any amount of tax to which the provisions of this subpart apply shall be made unless the claimant files a claim therefor within the time prescribed by law and in accordance with the provisions of this subpart.

[T.D. ATF-42, 42 FR 8373, Feb. 10, 1977]

BOND

§ 46.10 Bond, Form 2490.

Each claim for a refund or credit of tax on articles which the claimant or the owner, as the case may be, has neither sold nor contracted to sell at the time of filing of the claim must be accompanied by a bond on ATF Form 5620.10. The bond shall be executed by the claimant or the owner of the articles, as the case may be, in accordance with the provisions of this subpart and the instructions printed on the form. Such bond shall be conditioned that there will be no relief or shifting of the