

U.S.C. The United States Code.

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), (82 Stat. 959), and Sec. 38, Arms Export Control Act (90 Stat. 744) Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13553, Mar. 31, 1978; 44 FR 55854, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3007, Jan. 13, 1981; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-289, 54 FR 48839, Nov. 27, 1989; T.D. ATF-384, 61 FR 54085, Oct. 17, 1996; T.D. ATF-424, 64 FR 71930, Dec. 22, 1999; T.D. ATF-420, 64 FR 71939, Dec. 22, 1999; T.D. ATF, 457, 66 FR 32220, June 14, 2001; T.D. ATF-460, 66 FR 39094, July 27, 2001; T.D. ATF-467, 66 FR 49532, Sept. 28, 2001]

**Subpart C—Taxes**

**§ 40.21 Cigar tax rates.**

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

| Type and amount                  | Tax rate for removals during the years: |               |                |
|----------------------------------|---|---------------|----------------|
|                                  | 1993 to 1999                            | 2000 and 2001 | 2002 and after |
| Small cigars per thousand .....  | \$1.125                                 | \$1.594       | \$1.828        |
| Large cigars per thousand*       |   |               |                |
| • percentage of sale price ..... | 12.75%                                  | 18.063%       | 20.719%        |
| • but not to exceed→ .....       | \$30                                    | \$42.50       | \$48.75        |

\*For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand.

(b) See §40.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

[T.D. ATF-420, 64 FR 71939, Dec. 22, 1999]

**§ 40.22 Determination of sale price of large cigars.**

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases.*—(1) *In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold

on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with §70.701(d) of this chapter.

(2) *Adjustments in sale price.*—(i) *Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased

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retroactively (during a later return period), either by the manufacturer or by ATF's determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate ATF officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections,  
 (ii) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

[T.D. ATF-420, 64 FR 71939, Dec. 22, 1999]

**§ 40.23 Cigarette tax rates.**

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

| Product                               | Tax rate per thousand for removals during the years   |               |                |
|---------------------------------------|---|---------------|----------------|
|                                       | 1993 to 1999  | 2000 and 2001 | 2002 and after |
| Small cigarettes .....                | \$12  | \$17          | \$19.50        |
| Large cigarettes up to 6½" long ..... | 25.20   | 35.70         | 40.95          |
| Large cigarettes over 6½" long .....  | (2) Taxed at the rate for small cigarettes, counting each 2¾ inches or fraction thereof of the length of each as one cigarette. |               |                |

[T.D. ATF-420, 64 FR 71940, Dec. 22, 1999]

**§ 40.25 Smokeless tobacco tax rates.**

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

**§ 40.24 Classification of cigarettes.**

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

| Product     | Tax rate per pound* for removals during the years |               |                |
|-------------|---|---------------|----------------|
|             | 1993 to 1999                                      | 2000 and 2001 | 2002 and after |
| Snuff ..... | \$0.36  | \$0.51        | \$0.585        |