

liable to the civil and criminal penalties, and forfeitures, provided by law. (72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

AUTHORITY: Section 9302, Pub.L. 105-33, 111 Stat. 251, unless otherwise noted.

SOURCE: T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, unless otherwise noted.

GENERAL

§ 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

§ 46.192 Terms used in this subpart.

(a) *Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.28, Delegation of the Director's Authorities in parts 45 and 46.

(b) *Controlled group.* Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more

than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(d) *Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

(e) *Person.* When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) *Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

[T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, as amended by ATF-457, 66 FR 32220, June 14, 2001; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

§ 46.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

§ 46.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or taxdetermined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 46.207 and 46.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 46.209).

§ 46.195 Persons not liable for this tax.

If you do not hold any taxpaid or taxdetermined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

§ 46.196 Floor stocks requirements.

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the

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floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in §§ 46.205 and 46.206.

(b) *Compute tax amount.* Compute the amount of tax for the cigarettes held for sale at the start of each of the tax increase dates. Refer to the table shown in § 46.222. Apply the tax credit as provided by § 46.223.

(c) *File tax return.* After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) *Maintain records.* Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to § 46.241.

(Approved by the Office of Management and Budget under control number 1512-0554)

INVENTORIES

§ 46.201 Establish quantities of cigarettes.

You must take an inventory to establish the quantity of cigarettes subject

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000	December 26, 1999	January 10, 2000.
January 1, 2002	December 26, 2001	January 10, 2002.

§ 46.205 Physical inventory requirements.

Your physical inventory must include a written record of:

(a) *Quantity and Type.* You must record the quantity and type of ciga-

rettes to the floor stocks tax. You may take a physical inventory or a book or record inventory.

§ 46.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

§ 46.203 How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words "Tax-exempt. For use outside U.S." or "U.S. Tax Exempt. For use outside U.S."; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

§ 46.204 When to take inventory.

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

rettes in sufficient detail to determine the tax rate as stated in § 46.222 and whether the cigarettes have export markings as stated in § 46.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A).	Count the: <ul style="list-style-type: none"> • Number of cigarettes without export markings. • Number of cigarettes with export markings.
Large cigarettes (Class B).	Count the: <ul style="list-style-type: none"> • Number of large cigarettes 6.5" or less in length without export markings. • Number of large cigarettes 6.5" or less in length with export markings. • Number of each size of large cigarettes more than 6.5" in length without export markings. • Number of each size of large cigarettes more than 6.5" in length with export markings.