

§ 46.212

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tax. You must prepare a separate list of these items. You cannot include as unmerchanted any items that may be held because of poor market demand or to reduce your inventory.

§ 46.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

- (a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and
- (b) The cigarettes are ready to be dispensed by a consumer.

§ 46.213 Cigarettes marked “not for sale” or “complimentary”.

Cigarettes marked “not for sale” or “complimentary” that are part of a sale (for example, buy two packs and

get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 46.205 and 46.206. Cigarettes that are marked “not for sale” or “complimentary” and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

COMPUTE TAX LIABILITY

§ 46.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 46.222. Multiply the amount of each type of cigarette by the applicable tax rate.

§ 46.222 Floor stocks tax rates.

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000)	\$5 per 1,000 or 10 cents per 20	\$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000)	\$10.50 per 1,000 or 21 cents per 20	\$5.25 per 1,000 or 10.5 cents per 20
Special rule: For large cigarettes over 6½ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2¾ inches and any fraction of the length, as one (1)		

§ 46.223 Apply tax credit.

You are allowed a credit against your floor stocks tax of up to \$500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

FILING REQUIREMENTS

§ 46.231 How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

- (a) ATF web site (www.atf.treas.gov);
- (b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or
- (c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

§ 46.232 Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 46.233 How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

- (a) *Electronic fund transfer.* If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

- (1) ATF web site (www.atf.treas.gov);

Alcohol and Tobacco Tax and Trade Bureau, Treasury

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(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

(b) [Reserved]

§ 46.234 Tax return due dates.

Tax increase date	File tax return no later than:
January 1, 2000	March 31, 2000 ¹
January 1, 2002	April 1, 2002

¹ Section 9302(j) of P.L. 105-33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

§ 46.235 Filing requirements for multiple locations.

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of filing a separate return for each place of business or location.

§ 46.236 Cigarettes in a warehouse.

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The cigarettes can be re-

ported by a single location or apportioned among several locations.

§ 46.237 Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than \$500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in § 46.223 if it is apportioned to you as a member of the controlled group.

RECORDS

§ 46.241 Required records.

You must maintain:

- (a) Inventory records.
- (b) Tax computations.
- (c) Names, addresses and employer identification number of all controlled group members, if applicable.
- (d) Copy of tax return, if you filed one.
- (e) List of locations and warehouses covered by the tax return.
- (f) Any approved alternate method or procedure under 46.263.

§ 46.242 Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return	3 years from the tax increase date.
Filed a tax return on or before the due date of the return	3 years from the due date of the tax return, as specified in § 46.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

§ 46.243 Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

- (a) Address.
- (b) Name of the proprietor (if different).
- (c) The employer identification number (if different).

(d) Quantity and classification of all cigarettes held at each location.

§ 46.244 Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.