

U.S.C. The United States Code.

Subpart C—Taxes

(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))

§ 40.21 Cigar tax rates.

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

[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]

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