

§ 40.281

27 CFR Ch. I (4-1-08 Edition)

for which he is unable to furnish an explanation acceptable to the appropriate TTB officer.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

Subpart I—Claims by Manufacturers

GENERAL

§ 40.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, and the duplicate of the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax where the tobacco products after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on Form 2635, in duplicate, with the appropriate TTB officer, and shall show the date the to-

bacco products were removed from the factory. A claim relating to products lost or destroyed shall be supported as prescribed in § 40.301. In the case of a claim relating to tobacco products withdrawn from the market the schedule prescribed in § 40.311 shall be filed with the appropriate TTB officer. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Tobacco products to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such products were so removed. Upon action on the claim by the appropriate TTB officer he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the tobacco products to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the tobacco products to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.283 Credit or refund of tax.

The taxes paid on tobacco products may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the appropriate TTB officer that the claimant manufacturer paid the tax on tobacco products lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by him from the market. Any claim for credit

or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on tobacco products by 26 U.S.C. 7652 or chapter 52, was paid in respect to the tobacco products covered by the claim, and that the products were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to products lost or destroyed shall be supported as prescribed in § 40.301, and a claim relating to products withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 40.311 and 40.313. The original and one copy of Form 2635 (5620.8), claim for credit, or the original of Form 2635 (5620.8), claim for refund, shall be filed with the appropriate TTB officer. Upon action by the appropriate TTB officer on a claim for credit he will return the copy of Form 2635 to the manufacturer as notification of allowance or disallowance of the claim or any part thereof, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof he shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. Prior to consideration and action on his claim the manufacturer may not anticipate allowance of his claim by taking credit in his tax return. The duplicate of a claim for refund, with the copy of any verified supporting schedules, shall be retained by the manufacturer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1419)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-219, 50 FR 51389, Dec. 17, 1985; T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.284 Remission of tax liability.

Remission of the tax liability on tobacco products may be extended to the manufacturer liable for the tax where tobacco products in bond are lost (otherwise than by theft) or destroyed, by

fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where tobacco products are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the appropriate TTB officer. If the manufacturer wishes to be relieved of the tax liability thereon he shall also prepare a claim on Form 2635, in duplicate, setting forth the nature, date, place, and extent of the loss or destruction. Both copies of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer. Upon action on the claim by the appropriate TTB officer he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.285 [Reserved]

§ 40.286 Refund of overpayment.

Where an error in computation of the quantity of tobacco products or in computation of the amount of tax due results in an overpayment and such error is specifically identified and supported by records, the manufacturer may file claim for refund or may make an adjustment in his semimonthly tax return as provided in § 40.164. (Section 6511, 26 U.S.C., provides that, in most cases, any adjustment of claim for refund of an overpayment of tax on tobacco products must be made or filed within three years after the tax is paid.) If the manufacturer elects to file a claim for refund of an overpayment resulting from such a computational error, he shall do so on Form 2635 (5620.8), in duplicate. The original shall be filed with the appropriate TTB officer, and the duplicate retained by the manufacturer. Where an overpayment of tax on tobacco products results from other than a computational error any claim for refund or credit shall be