

article was actually sold. If the manufacturer later obtains such proof, it may file a claim for refund or credit of this tax. The payment of this tax by the manufacturer is not considered an overpayment by the subsequent manufacturer or producer for which the subsequent manufacturer or producer is entitled to a credit or refund under section 6416(b)(3) of the Code. See section 4221(d)(6) of the Code and paragraph (b) of this section for the circumstances under which an article is considered to have been sold for use in further manufacture.

(2) *Proof of resale*—(i) *Certificate of purchaser*. The proof of resale to be received by the manufacturer, as required under section 4221(b)(1) of the Code, may consist of either a copy of the invoice of the manufacturer's vendee directed to his purchaser which discloses the certificate of registry number held by each party or a statement described in this paragraph. In the case of an invoice of manufacturer's vendee, it must appear from such invoice (or by statement attached thereto) that the article was in fact resold for use in further manufacture. In lieu of such an invoice, proof of resale may consist of a statement, executed and signed by the manufacturer's vendee which includes the following:

(A) Date statement was executed.

(B) Name and address of manufacturer's vendee (if other than the person executing statement).

(C) Certificate of registry number held by vendee.

(D) Specify article(s) purchased tax-free, by whom purchased, certificate of registry number of second purchaser, date of purchase(s), whether articles were purchased as material in the manufacture or production of, or as a component part or parts of, an article or articles taxable under Chapter 32 of the Code.

(E) Statement that person executing statement or manufacturer's vendee possesses proof of tax-free resale of the article(s) in the form of purchase orders and sales invoices and identifying the person who will maintain custody of such proof for 3 years from the date of the statement and will make such proof available for inspection by TTB during such 3 year period.

(F) Statement that a previous statement has not been executed in respect of such certificate of resale and that the person signing the statement is aware that fraudulent use of the statement may subject the person signing the statement and all parties making fraudulent use of the statement to all applicable criminal penalties under the Code.

(G) Name, signature, and title of individual executing statement.

(ii) *Period covered*. Any statement executed and signed by the manufacturer's vendee, as provided in paragraph (c)(2)(i) of this section, may be executed with respect to any one or more articles purchased tax free from a manufacturer and resold for use in further manufacture within the 6-month period prescribed in section 4221(a)(1) of the Code and paragraph (c)(1) of this section. Such statement (or other prescribed proof of resale) must be retained for inspection by the appropriate TTB officer as provided in section 6001 of the Code.

(iii) *TTB I 5600.37*. A preprinted statement, TTB I 5600.37, Statement of Manufacturer's Vendee, which is available as provided in § 53.21(b), when completed, contains all necessary information for a properly executed statement. Extra copies of TTB I 5600.37 may be reproduced as needed.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-380, 61 FR 37005, July 16, 1996]

§ 53.133 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.

(a) *In general*. (1) An article subject to tax under chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(2) of the Code and this section, for export, or for resale by the purchaser to a second purchaser for export. See § 53.11 for the meaning of the term "exportation". An article may be sold tax free by the manufacturer under the provisions of this section only if the person to whom the manufacturer sells the article intends either to export the article or to resell it to a person who intends to export it. An article may not be sold tax free under the provisions of this section by a manufacturer to a

purchaser for resale to a second purchaser which does not intend to export the article itself but plans to resell it to a third purchaser for export. See section 6416(b)(2)(A) of the Code and §53.177 for the circumstances under which credit or refund of tax is available where tax-paid articles are exported from the United States.

(2) If an article, otherwise taxable under chapter 32 of the Code:

(i) Is sold tax free by the manufacturer pursuant to section 4221(a)(2) of the Code and this section, and

(ii) Is returned subsequently to the United States in an unused and undamaged condition,

then the importer is liable for the tax imposed by chapter 32 of the Code on the subsequent sale or use of the article in the United States. The provisions of this paragraph (a)(2) of this section may be illustrated by the following examples:

Example (1). Q, a U.S. manufacturer of shells and cartridges, previously sold shells and cartridges to R, a company in Canada. The sale was tax free under section 4221(a)(2). Prior to use, R sold the shells and cartridges to S, who imports the articles into the United States and sells them. The sale of the shells and cartridges subjects S to an excise tax liability under section 4181.

Example (2). X, a U.S. firearms manufacturer, sold a rifle to Y company in France. The sale was tax free under section 4221(a)(2). The rifle was sold by Y to W, an individual in the City of Nice, France. After initial use, W resold the rifle to X. X returned the rifle to the United States where it was resold. The resale of the rifle by X does not subject X to an excise tax liability under section 4181.

(b) *Sales or resales to a foreign purchaser for export.* In the case of sales or resales to a foreign purchaser for export, if the first or the second purchaser is located in a foreign country or possession of the United States, such purchaser is not required to register as provided in section 4222(a) of the Code and §53.140. To establish the right to sell articles tax free for export to a purchaser who is not registered and who is located in a foreign country or a possession of the United States, the manufacturer must obtain from such purchaser at the time title to the article passes or at the time of shipment, whichever is earlier, either:

(1) A written order or contract of sale showing that the manufacturer is to ship the article to a foreign destination; or

(2) Where delivery by the manufacturer is to be made within the United States, a statement from the purchaser showing:

(i) That the article is purchased either to fill existing or future orders for delivery to a foreign destination or for resale to another person engaged in the business of exporting who will export the article, and

(ii) That such article will be transported to its foreign destination in due course prior to use or further manufacture and prior to any resale except for export. See section 4221(b) of the Code and paragraphs (c) and (d) of this section for requirements as to timely proof of exportation and cessation of the exemption for export unless the evidence to show actual exportation has been received by the manufacturer.

(c) *Cessation of exemption.* The exemption provided in section 4221(a)(2) of the Code and paragraph (a) of this section for an article sold by the manufacturer for export or for resale by the purchaser to a second purchaser for export shall cease to apply on the first day following the close of the 6-month period which begins on the date of the sale of the article by the manufacturer, or the date of shipment of the article by the manufacturer, whichever is earlier, unless within the 6-month period the manufacturer receives proof, in the form prescribed by paragraph (d) of this section, that the article was actually exported. If, on the first day following the close of the 6-month period, the proof has not been received, the manufacturer shall become liable for tax at that time at the rate in effect when the sale was made but otherwise in the same manner as if the article had been sold by it on such first day at a taxable price equivalent to that at which the article was actually sold.

(d) *Proof of exportation.* (1) Exportation may be evidenced by:

(i) A copy of the export bill of lading issued by the delivering carrier,

(ii) A certificate by the agent or representative of the export carrier showing actual exportation of the article,

(iii) A certificate of landing signed by a customs officer of the foreign country to which the article is exported,

(iv) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article, or

(v) Where a department or agency of the United States Government is unable to furnish any one of the foregoing four types of proof of exportation, a statement or certification on the department or agency stationery, executed by an authorized officer, that the listed or identified articles have, in fact, been exported.

(2) In any case where the manufacturer is not the exporter, the manufacturer must have in its possession a statement from the vendee to whom the manufacturer sold the article stating the following:

(i) Date statement was executed.

(ii) Name and address of manufacturer's vendee (if other than the person executing statement).

(iii) Certificate of registry number held by vendee.

(iv) Specify article(s) purchased tax-free, by whom purchased, and date of purchase.

(v) Statement that article(s) was either exported in due course by the vendee or was sold to another person who in due course exported the article(s).

(vi) Name and address of vendee who will maintain possession of the proof of exportation documents, description of the documents, and statement that vendee will maintain documents for 3 years and make them available to TTB for inspection.

(vii) Statement that a previous statement has not been executed in respect of the articles covered by this statement and that fraudulent use of this statement may subject person executing statement and all parties making fraudulent use of statement to all applicable criminal penalties under the Code.

(viii) Name, signature, title, and address of individual executing certificate.

(3) The statement executed and signed by the manufacturer's vendee, as provided in paragraph (d)(2) of this section, may be executed with respect

to any one or more articles purchased tax free from a manufacturer and exported within the 6-month period prescribed in section 4221(b)(2) of the Code and paragraph (c) of this section. Such statement shall be kept for inspection by the appropriate TTB officer as provided in section 6001 of the Code.

(4) *TTB I 5600.36*. A preprinted statement, TTB I 5600.36, Statement of Manufacturer's Vendee, which is available as provided in § 53.21(b), when completed, contains all necessary information for a properly executed statement. Extra copies of TTB I 5600.36 may be reproduced as needed.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-344, 58 FR 40354, July 28, 1993; T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF-380, 61 FR 37006, July 16, 1996]

§ 53.134 Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft.

(a) *Supplies for vessels or aircraft*—(1) *In general*. An article subject to tax under chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(3) of the Code and this section, for use by the purchaser as supplies for vessels or aircraft. See paragraph (b) of this section for the meaning of the term “supplies for vessels or aircraft.” An article may be sold tax free under the provisions of this section only in those cases where the sale of an article by the manufacturer is made directly to the owner, officer, charterer, or authorized agent of a vessel or aircraft for use as supplies for the vessel or aircraft. No sale may be made tax free to a dealer for resale for use as supplies for vessels or aircraft, even though it is known at the time of sale by the manufacturer that the article will be so resold. See section 6416(b)(2)(B) of the Code and paragraph (c) of § 53.178 for circumstances under which credit or refund of tax is available where tax-paid articles are used, or sold for use, as supplies for vessels or aircraft. An article may not be sold tax free under the provisions of this section by the manufacturer to passengers or members of the crew of a vessel or aircraft.

(2) *Civil aircraft of foreign registry*. In the case of any article sold by the manufacturer for use by the purchaser as