

of § 53.131 have application as to the evidence required in support of tax-free sales. If a State or local government is not registered, the evidence required in support of a tax-free sale to the State or local government shall, except as provided in paragraph (c)(2) of this section, consist of a certificate, executed and signed by an officer or employee authorized by the State or local government to execute and sign the certificate. If it is impracticable to furnish a separate certificate for each order or contract because of frequency of purchases, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the manufacturer as provided in § 53.24(d). A certificate of exemption to support tax-free sales under this section must contain the following:

(i) Title of official executing certificate, branch of government, date executed, and statement that official is authorized to execute certificate.

(ii) List articles covered by the certificate or beginning and ending dates during which orders will be placed by the purchaser (period not to exceed 12 calendar quarters).

(iii) Name of manufacturer from which articles purchased.

(iv) Governmental unit purchasing articles.

(v) Statement that is understood that articles purchased under this certificate of exemption are limited to use exclusively by the purchasing governmental entity.

(vi) Statement that is understood that any fraudulent use of this certificate may subject the person executing the certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(vii) Name, address, and signature of person executing the certificate.

(2) A purchase order, provided that all of the information required by paragraph (c)(1) of this section is included therein, is acceptable in lieu of a separate exemption certificate.

(3) *TTB I 5600.35*. A preprinted certificate, *TTB I 5600.35*, Exemption Certificate, which is available as provided in

§ 53.21(b), when completed, contains all necessary information for a properly executed certificate. Extra copies of *TTB I 5600.35* may be reproduced as needed.

(d) *Resale of articles purchased tax free by a State or local government*. If articles purchased tax free for the exclusive use of a State or local government (whether on the basis of a registration number or an exemption certificate) are, prior to use by the State or local government, resold under circumstances that do not amount to an exclusive use by the State or local government (such as pistols or revolvers that are resold by a police department to its police officers), the parties responsible in the State or local government are required to inform the manufacturer, producer, or importer from whom the articles were purchased that they were disposed of in a manner that did not amount to an exclusive use by the State or local government. A willful failure to supply the manufacturer, producer, or importer with the information required by this subparagraph will subject responsible parties to the penalties provided by section 7203 of the Code.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-380, 61 FR 37006, July 16, 1996]

**§ 53.136 Tax-free sales of articles to nonprofit educational organizations.**

(a) *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)(5) of the Code and this section, to a nonprofit educational organization for its exclusive use. See paragraph (b) of this section for the meaning of the term “nonprofit educational organization”. An article may be sold tax free by the manufacturer under this paragraph only in those cases where the sale of an article by the manufacturer is made directly to a nonprofit educational organization for its exclusive use. Accordingly, no sale may be made tax free to a dealer for resale to a nonprofit educational organization for its exclusive use 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)(D) of the Code, and paragraph (e) of §53.178, for the circumstances under which credit or refund of tax is available where tax-paid articles are sold for the exclusive use of a nonprofit educational organization.

(b) *Nonprofit educational organization.* The term “nonprofit educational organization” means an organization described in section 170(b)(1)(A)(ii) of the Code that is exempt from income tax under section 501(a) of the Code. Section 170(b)(1)(A)(ii) describes an “educational organization” as one that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term also includes a school operated as an activity of an organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code, provided the primary function of such school is the presentation of formal instruction and provided such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(c) *Evidence required in support of tax-free sales to nonprofit educational organizations.* Every nonprofit educational organization purchasing tax free under section 4221(a)(5) of the Code must furnish the following information to the seller:

(1) The tax exempt purpose for which the article or articles are being purchased, and

(2) Its registration number. Such information must be in writing and may be noted on the purchase order or other document furnished by the purchaser to the seller in connection with each sale “except that a single notification containing the information described in this paragraph may cover all sales by the seller to the purchaser made during a designated period not to exceed 12 successive calendar quarters.”.

See paragraph (c) of §53.131 for the evidence required to establish exemption.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-447, 66 FR 19088, Apr. 13, 2001]

**§§ 53.137-53.139 [Reserved]**

**§ 53.140 Registration.**

(a) *General rule.* Except as provided in §53.141, tax-free sales under section 4221 of the Code may be made only if the manufacturer, first purchaser, and second purchaser, as the case may be, have registered as required by this section. To secure a Certificate of Registry, the applicant must furnish the information required in paragraph (b) of this section.

(b) *Information to be submitted.* Except as provided in §53.141, any person who is eligible to sell or purchase articles free of a tax imposed by section 4181 of the Code and who has not registered with the Commissioner of the Internal Revenue Service prior to January 1, 1991 or with TTB in accordance with the provisions of this section shall, prior to making a tax-free sale or purchase, file TTB Form 5300.28, in duplicate, executed in accordance with the instructions contained on the reverse of TTB Form 5300.28. The person who receives an approved Certificate of Registry shall be considered to be registered for purposes of selling or purchasing articles tax free as provided in this section. In the case of a nonprofit educational organization, information shall be furnished showing that the organization is an educational organization described in section 170(b)(1)(A)(ii) of the Code that is exempt from income tax under section 501(a) of the Code, or is a school operated as an activity of an organization described in section 501(c)(3) that is exempt from income tax under section 501(a).

(c) *Evidence required in support of tax-free sales.* See §53.131(c)(1) for evidence required in support of tax-free sales to purchasers who are required to be registered.

(d) *Failure to register.* If either the seller or purchaser is not registered as required by this section of the regulations, tax-free sales may not be made, except as indicated in §53.141.