

1513-0068

26 U.S.C.

§ 5741. Records to be maintained

Every manufacturer of tobacco products or cigarette papers and tubes, every importer, and every export warehouse proprietor shall keep such records in such manner as the Secretary shall by regulation prescribe. The records required under this section shall be available for inspection by any internal revenue officer during business hours.

27 CFR

§ 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 TTB 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 TTB officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If TTB decides it is necessary, we will publish constructive sale price determinations in the TTB 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 TTB 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 retroactively (during a later return period), either by the manufacturer or by TTB's

determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate TTB officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (e. g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as “imperfects”, “seconds”, “throw-outs”, or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

[T.D. ATF-420, 64 FR 71939, Dec. 22, 1999]

§ 40.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§40.182 and 40.183. For this purpose *day* shall mean calendar day, except that the appropriate TTB officer may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the

appropriate TTB officer. No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in §§40.184 and 40.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§40.184 and 40.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term *business day* shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.182 Record of tobacco.

The record of a manufacturer of tobacco products shall show the date and total quantity in pounds, of all tobacco other than tobacco products:

- (a) Received (including tobacco resulting from reduction of cigars and cigarettes, and unpackaging of smokeless tobacco, pipe tobacco and roll-your-own tobacco), together with the name and address of the person from whom received;
- (b) Shipped or delivered, together with the name and address of the person to whom shipped or delivered;
- (c) Lost; and
- (d) Destroyed.

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[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

- (a) Manufactured;
- (b) Received in bond by—
 - (1) Transfer from other factories,
 - (2) Release from customs custody,
 - (3) Transfer from export warehouses, and
 - (4) Transfer from foreign trade zone;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;
- (e) Removed subject to tax (itemize large cigars by sale price in accordance with §40.22, except cigars that cost more than \$235.294 may optionally be shown as if the price were \$236 per thousand);
- (f) Removed, in bond, for—
 - (1) Export,
 - (2) Transfer to export warehouses,
 - (3) Transfer to other factories,
 - (4) Transfer to a foreign trade zone
 - (5) Use of the United States, and
 - (6) Experimental purposes off factory premises;
- (g) Otherwise disposed of, without determination of tax, by—
 - (1) Consumption by employees on factory premises,

(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,

(3) Use for experimental purposes on factory premises,

(4) Loss,

(5) Destruction, and

(6) Reduction to materials;

(h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined and which are—

(1) Received, and

(2) Disposed of.

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[T.D. ATF–421, 64 FR 71923, Dec. 22, 1999, as amended by T.D. ATF–424, 64 FR 71931, Dec. 22, 1999; T.D. ATF–420, 64 FR 71940, Dec. 22, 1999]

§ 40.184 Record of removals subject to tax.

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

(1) The date of removal,

(2) The name and address of the person to whom shipped or delivered,

(3) The kind and quantity of tobacco products removed, and

(4) For large cigars, show the sale price (If the sale price is more than \$235.294 per thousand, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this

section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an appropriate TTB officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741))

[T.D. ATF-420, 64 FR 71941, Dec. 22, 1999]

§ 40.185 Retention of records.

All records required to be kept under this part, including copies of authorizations, claims, inventories, notices, reports, returns and schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be kept in the factory or a place convenient thereto, and shall be made available for inspection by any appropriate TTB officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 40.186 Record in support of transfers in bond.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products transferred in bond to or received in bond from other factories, and shall make the entries therein at the time of each receipt or removal of such products. Such supporting records shall show the date of receipt or removal, the name of the manufacturer and address of the factory from which received or to which removed or the permit number of such factory, and the kind and quantity of tobacco products. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each receipt and removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

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(72 Stat. 1423, as amended; 26 U.S.C. 5741)

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INVENTORIES AND REPORTS

§ 40.201 Inventories.

Every manufacturer of tobacco products shall make true and accurate inventories on Form 5210.9, which inventories shall include all tobacco products and tobacco on hand required to be accounted for in the records kept under this part. The manufacturer shall make such an inventory at the time of commencing business, which shall be the effective date of the permit issued upon original qualification under this part; at the time of transferring ownership; at the time of changing the location of his factory to a different region; at the time of concluding business; and at such other time as any appropriate TTB officer may require. Each inventory shall be prepared in duplicate, and shall be subject to verification by an appropriate TTB officer. The original of each such inventory shall be submitted to the appropriate TTB officer, and the duplicate shall be retained by the manufacturer.

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(72 Stat. 1422, 1423, as amended; 26 U.S.C. 5721, 5741)

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