

## **26 U.S.C.**

### **Sec. 4181. Imposition of tax**

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent--

Pistols.  
Revolvers.

Articles taxable at 11 percent--

Firearms (other than pistols and revolvers).  
Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

### **Sec. 4221. Certain tax-free sales**

#### **(a) General rule**

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter A or C of chapter 31 on the first retail sale) of an article--

- (1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,
- (2) for export, or for resale by the purchaser to a second purchaser for export,
- (3) for use by the purchaser as supplies for vessels or aircraft,
- (4) to a State or local government for the exclusive use of a State or local government, or

(5) to a nonprofit educational organization for its exclusive use, but only if such exportation or use is to occur before any other use. Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, 4071, or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2005. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter A of

chapter 31, paragraphs (1), (3), (4), and (5) shall not apply.

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\1\ So in original. The comma probably should not appear.  
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(Added Pub. L. 85-859, title I, Sec. 119(a), Sept. 2, 1958, 72 Stat. 1282; amended Pub. L. 86-70, Sec. 22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86-344, Sec. 2(b), Sept. 21, 1959, 73 Stat. 617; Pub. L. 86-418, Sec. 1, Apr. 8, 1960, 74 Stat. 38; Pub. L. 86-624, Sec. 18(e), July 12, 1960, 74 Stat. 416; Pub. L. 87-61, title II, Sec. 205(a), June 29, 1961, 75 Stat. 126; Pub. L. 89-44, title II, Sec. 208(d), title VIII, Sec. 801(c), (d)(1), June 21, 1965, 79 Stat. 141, 158; Pub. L. 91-172, title I, Sec. 101(j)(26), Dec. 30, 1969, 83 Stat. 529; Pub. L. 92-178, title IV, Sec. 401(a)(3)(A), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-227, Sec. 2(b)(2), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95-600, title VII, Sec. 701(ff)(2)(A), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 95-618, title II, Secs. 201(c)(1), 232(a), 233(c)(1), (2), Nov. 9, 1978, 92 Stat. 3183, 3189, 3191, 3192; Pub. L. 96-222, title I, Sec. 108(c)(5), Apr. 1, 1980, 94 Stat. 227; Pub. L. 97-424, title V, Secs. 515(b)(1), 516(b)(2), Jan. 6, 1983, 96 Stat. 2181, 2183; Pub. L. 98-369, div. A, title VII, Sec. 735(c)(8), July 18, 1984, 98 Stat. 983; Pub. L. 99-499, title V, Sec. 521(d)(4), Oct. 17, 1986, 100 Stat. 1779; Pub. L. 99-514, title XVII, Sec. 1703(c)(2)(C), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100-17, title V, Sec. 502(b)(4), Apr. 2, 1987, 101 Stat. 257; Pub. L. 100-203, title IX, Sec. 9201(b)(1), title X, Sec. 10502(d)(4), Dec. 22, 1987, 101 Stat. 1330-330, 1330-444; Pub. L. 101-239, title VII, Sec. 7841(d)(17), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101-508, title XI, Secs. 11211(d)(3), 11221(b), (d)(1), (2), Nov. 5, 1990, 104 Stat. 1388-427, 1388-444; Pub. L. 102-240, title VIII, Sec. 8002(b)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103-66, title XIII, Sec. 13161(b)(1), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105-178, title IX, Sec. 9002(b)(1), June 9, 1998, 112 Stat. 500; Pub. L. 105-206, title VI, Sec. 6023(17), July 22, 1998, 112 Stat. 825; Pub. L. 108-357, title VIII, Sec. 853(d)(2) (F), Oct. 22, 2004, 118 Stat. 1613.)

## **Sec. 6416. Certain taxes on sales and services**

### **(b) Special cases in which tax payments considered overpayments**

Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

#### **(2) Specified uses and resales**

The tax paid under chapter 32 (or under subsection (a) or (d) of

section 4041 in respect of sales or under section 4051) in respect of any article shall be deemed to be an overpayment if such article was, by any person--

- (A) exported;
- (B) used or sold for use as supplies for vessels or aircraft;
- (C) sold to a State or local government for the exclusive use of a State or local government;
- (D) sold to a nonprofit educational organization for its exclusive use;
- (E) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or
- (F) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064. In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. This paragraph shall not apply in the case of any tax imposed under section 4041(a)(1) or 4081 on diesel fuel or kerosene and any tax paid under section 4121.

(3) Tax-paid articles used for further manufacture, etc.

If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if--

- (A) in the case of any article other than any fuel taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of--
  - (i) another article taxable under chapter 32, or
  - (ii) an automobile bus chassis or an automobile bus body, manufactured or produced by him; or
- (B) in the case of any fuel taxable under section 4081, such fuel is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

## 27 CFR

### Sec. 53.131 Tax-free sales; general rule.

(a) In general. Section 4221(a) of the Code sets forth the following exempt purposes for which an article subject to tax under chapter 32 of the Code may be sold tax-free by the manufacturer, producer, or importer:

(1) For use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) For export, or for resale by the purchaser to a second purchaser for export,

(3) For use by the purchaser as supplies for vessels or aircraft,

(4) To a State or local government for the exclusive use of a State or local government, and

(5) To a nonprofit educational organization for its exclusive use.

Section 4221(a) of the Code applies only in those cases where the exportation or use referred to is to occur before any other use, and where the seller, first purchaser, and second purchaser, as may be appropriate, have registered as required under section 4222 of the Code and paragraph (a) of Sec. 53.140. See paragraph (c) of this section for provisions relating to evidence required in support of tax-free sales. See Sec. 53.141 for exceptions to the requirement for registration. Where tax is paid on the sale of an article, but the article is used or resold for use for an exempt purpose, a claim for credit or refund may be filed in accordance with and to the extent provided in sections 6402(a) and 6416 of the Code, and the regulations thereunder (Sec. Sec. 53.161 and 53.171-53.186).

(b) Manufacturer relieved of liability in certain cases--(1) General rule. Under the provisions of section 4221(c) of the Code, if an article subject to tax under Chapter 32 of the Code is sold free of tax by the manufacturer of the article for an exempt purpose referred to in section 4221(c) of the Code and paragraph (b)(2) of this section, the manufacturer shall be relieved of any tax liability under chapter 32 of the Code with respect to such sale if the manufacturer in good faith accepts a proper certification by the purchaser that the article or articles will be used by the purchaser in the stated exempt manner. See paragraph (b)(2) of this section for a list of the exempt purposes referred to in section 4221(c) of the Code.

(2) Situations wherein section 4221(c) of the Code is applicable. The following are situations wherein section 4221(c) of the Code is applicable with respect to sales made tax free on the assumption that one of the following sections of the Code provides exemption for such sales:

(i) Section 4221(a)(1) of the Code, to the extent that it relates to

sales for further manufacture by a first purchaser (see Sec. 53.132),

(ii) Section 4221(a)(3) of the Code, relating to supplies for vessels and aircraft (see Sec. 53.134),

(iii) Section 4221(a)(4) of the Code, relating to sales to State or local governments (see Sec. 53.135),

(iv) Section 4221(a)(5) of the Code, relating to sales to nonprofit educational organizations (see Sec. 53.136).

(3) Situations wherein section 4221(c) of the Code is not applicable. The relief from liability for the payment of tax provided by section 4221(c) of the Code is not applicable with respect to sales made tax free on the assumption that one of the following sections of the Code provides exemption for such sales:

(i) Section 4221(a)(1) of the Code, to the extent that it relates to sales for resale to a second purchaser for use by the second purchaser in further manufacture (see Sec. 53.132),

(ii) Section 4221(a)(2) of the Code, relating to sales for export (see Sec. 53.133).

(4) Duty of seller to ascertain validity of tax-free sale. If the manufacturer at the time of its sale has reason to believe that the article sold by it is not intended for the exempt purpose indicated by the purchaser, or that the purchaser has failed to register as required, the manufacturer is not considered to have accepted certification from the purchaser in good faith, and is not relieved from liability under the provisions of section 4221(c) of the Code.

(5) Information to be furnished to purchaser. A manufacturer selling articles free of tax under this section shall indicate to the purchaser that:

(i) Certain articles normally subject to tax are being sold tax free, and

(ii) The purchaser is obtaining those articles tax free for an exempt purpose under an exemption certificate or its equivalent.

(6) The manufacturer may transmit this information by any convenient means, such as coding of sales invoices, provided that the information is presented with sufficient particularity so that the purchaser is informed that he has obtained the articles tax free and:

(i) The purchaser can compute and remit the tax due if an article sold tax free for further manufacture is diverted to a taxable use,

(ii) The manufacturer can remit the tax due with respect to an article purchased tax free for resale for use in further manufacture or for export if, within the 6-month period described in Sec. 53.132(c) or Sec. 53.133(c), the manufacturer does not receive proof that the article has been exported or resold for use in further manufacturer, or

(iii) The purchaser can notify the manufacturer if an article otherwise purchased tax free is diverted to a taxable use.

(c) Evidence required in support of tax-free sales--(1) Purchasers required to be registered. Every purchaser who is required to be

registered (see Sec. 53.140) shall furnish to the seller, as evidence in support of each tax-free sale made by the seller to such purchaser, the exempt purpose for which the article or articles are being purchased and the registration number of the purchaser. 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.

(2) Purchasers not required to be registered. For the evidence which purchasers not required to register must furnish to the seller in support of each tax-free sale made by the seller to such purchasers, see paragraph (b) of Sec. 53.133 for sales or resales to a foreign purchaser for export, paragraph (d) of Sec. 53.134 for sales of supplies to vessels or aircraft, paragraph (c) of Sec. 53.135 for sales to State and local governments, and paragraph (c) of Sec. 53.141 for sales and purchases by the United States.

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

**Sec. 53.132 Tax-free sale of articles to be used for, or resold for, further manufacture.**

(a) Further manufacture--(1) In general. Under prescribed conditions, an article subject to tax under Chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(1) of the Code, for use by the purchaser in further manufacture, or for resale by the purchaser to a second purchaser for use by the second purchaser in further manufacture. 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. See section 6416(b)(3) of the Code and Sec. 53.180 for the circumstances under which credit or refund is available when tax-paid articles are used in further manufacture.

(2) Proof of resale for use in further manufacture. See section 4221(b)(1) of the Code and paragraph (c) of this section for provisions under which the exemption provided in section 4221(a)(1) of the Code shall cease to apply in the case of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use in further manufacture unless the manufacturer receives timely proof of resale for further manufacture.

(b) Circumstances under which an article is considered to have been sold for use in further manufacture. (1) For purposes of the exemption from the manufacturers excise tax provided by section 4221(a)(1) of the Code, an article shall be treated as sold for use in further manufacture if the article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Code;

(2) An article is used as material in the manufacture or production of, or as a component of, another article if it is incorporated in, or is a part or accessory of, the other article when the other article is sold by the manufacturer. In addition, an article is considered to be used as material in the manufacture of another article if it is consumed in whole or in part in testing such other article; for example, shells or cartridges that are used by the manufacturer of firearms to test new firearms. However, an article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not considered to have been used as material in the manufacture of, or as a component part of, another article.

(c) Proof of resale for further manufacture--(1) Cessation of exemption. The exemption provided in section 4221(a)(1) of the Code and described in paragraph (a) of this section in respect of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use by the second purchaser in further manufacture 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 such article by the manufacturer, or the date of shipment of the article by the manufacturer, whichever is earlier, unless, within such 6-month period, the manufacturer receives proof, in the form prescribed by paragraph (c)(2) of this section, that the article was actually resold by the purchaser to a second purchaser for such use. If, on the first day following the close of the 6-month period, such 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. 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 Sec. 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]

**Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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]

**Sec. 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 Sec. 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 supplies for civil aircraft of foreign registry employed in foreign trade or in trade between the United States and any of its possessions, the provisions of this paragraph apply only if the reciprocity requirements of section 4221(e)(1) of the Code are met. See paragraph (c) of this section.

(b) Meaning of terms--(1) Supplies for vessels or aircraft. The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions.

(2) Fuel supplies, ships' stores, and legitimate equipment. The terms "fuel supplies", "ships' stores", and "legitimate equipment" include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or in trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, even though such vessels may make intermediate stops in the United States. The term does not include supplies for vessels engaged in trade:

- (i) Between domestic ports in the Atlantic Ocean and the Gulf of Mexico,
- (ii) Between domestic ports on the Pacific Ocean,
- (iii) Between domestic ports on the Great Lakes, or
- (iv) On the inland waterways of the United States.

(3) Sea stores. The term sea stores includes any article purchased for use or consumption by the passengers or crew, or both, of a vessel during its voyage.

(4) Vessel. The term vessel includes:

(i) Every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water,

(ii) Civil aircraft registered in the United States and employed in foreign trade or in trade between the United States and any of its possessions, and

(iii) Civil aircraft registered in a foreign country and employed in foreign trade or trade between the U.S. and its possessions.

(5) Vessels of war of the United States or of any foreign nation.

The term vessels of war of the United States or of any foreign nation includes:

(i) Every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water and constituting equipment of the armed forces (including the U.S. Coast Guard and U.S. National Guard) of the United States or of a foreign nation, and

(ii) Aircraft owned by the United States or by any foreign nation and constituting equipment of the armed forces thereof.

(iii) For purposes of this section, vessels or aircraft owned by armed forces are not considered to be equipment of such armed forces while on lease or loan to an organization that is not part of the armed forces.

(6) Vessels used in fisheries or whaling business. The exemption provided by section 4221(a)(3) of the Code and paragraph (a) of this section in the case of articles sold for the prescribed use on vessels employed in the fisheries or whaling business is limited to articles sold by the manufacturer for such use on vessels while employed, and to the extent employed, exclusively in the fisheries or in the whaling business. For purposes of this section, vessels engaged in sport fishing are not considered to be employed in the fisheries business.

(7) Civil aircraft. The exemption provided by section 4221(a)(3) of the Code and paragraph (a) of this section relating to supplies for vessels or aircraft, with respect to civil aircraft, extends only to civil aircraft when employed in foreign trade, or in trade between the United States and any of its possessions. Sales of supplies to civil aircraft when engaged in trade between the Atlantic and the Pacific ports of the United States are not exempt from the tax imposed under chapter 32 of the Code. See section 4221(e)(1) of the Code and paragraph (c) of this section for requirement of reciprocal exemption in the case of a civil aircraft registered in a foreign country.

(8) Trade. The term "trade" includes the transportation of persons or property for hire and the making of the necessary preparations for such transportation. The term "trade" also includes the transportation of property on a vessel or aircraft owned or chartered by the owner of the property in connection with the purchase, sale, or exchange of the property in a commercial business operation. However, a vessel owned or chartered by a company and used in the transportation of

personnel or property of such company to or from its business properties located in a foreign country, or in a possession of the United States, is not engaged in "trade".

(c) Reciprocity required in the case of civil aircraft. The exemption provided by section 4221(a)(3) of the Code and paragraph (a) of this section with respect to the sales of supplies for civil aircraft registered in a foreign country is further limited in that the privilege of exemption may be granted only if the Secretary of Commerce advises the Secretary of the Treasury that the foreign country allows, or will allow, substantially the same reciprocal privileges. If a foreign country discontinues the allowance of such substantially reciprocal exemption, the exemption allowed by the United States will not apply after the Secretary of the Treasury is notified by the Secretary of Commerce of the discontinuance of the exemption allowed by the foreign country.

(d) Evidence required to establish--(1) In general. The exemption provided in section 4221(a)(3) of the Code and paragraph (a) of this section for articles sold for use by the purchaser as supplies for vessels or aircraft applies only:

(i) If both the manufacturer and purchaser are registered under the provisions of section 4222 of the Code, or

(ii) The purchaser or both the manufacturer and the purchaser are not registered but have satisfied the provisions of paragraph (d)(2) of this section.

See paragraph (c) of Sec. 53.131 for the evidence required to establish exemption where the purchaser is registered pursuant to section 4222 of the Code and Sec. 53.140.

(2) Exemption certificates for use in support of tax-free sales of supplies for vessels and aircraft. (i) In order to establish exemption from tax under section 4221(a)(3) of the Code in those instances where the purchaser or both the manufacturer and purchaser are not registered under section 4222 of the Code, the manufacturer must obtain (prior to or at the time of the sale) from the owner, charterer, or authorized agent of the vessel or aircraft and retain in the manufacturer's possession a properly executed exemption certificate in the form prescribed by paragraph (d)(2)(iii) of this section. If articles are sold tax-free for use as supplies for civil aircraft employed in foreign trade or in trade between the United States and any of its possessions, the exemption certificate must show the name of the country in which the aircraft is registered.

(ii) Where only occasional sales of articles are made to a purchaser for use as supplies for vessels or aircraft, a separate exemption certificate shall be furnished for each order. However, where sales are regularly or frequently made to a purchaser for such exempt use, a certificate covering all orders for a specified period not to exceed 12

calendar quarters will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be kept for inspection by the appropriate TTB officer as provided in section 6001 of the Code.

(iii) Acceptable form of exemption certificate. A certificate of exemption to support tax-free sales under this section must include the following:

(A) Name of owner, charterer, or authorized agent.

(B) Name of company and vessel.

(C) List article(s) covered by the certificate or beginning and ending dates during which orders will be placed (not to exceed 12 calendar quarters).

(D) Statement that articles will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the class of vessels to which section 4221 of the Code applies. Identify class of vessel certificate covers (see paragraphs (a) and (b) of this section).

(E) If articles are purchased for use on civil aircraft engaged in foreign trade or trade between the United States and any of its possessions, state the country in which the aircraft is registered.

(F) Statement that it is understood that if any articles are used for any purpose other than as stated in the certificate, or are resold or otherwise disposed of, the person executing the certificate must notify the manufacturer.

(G) Statement that the certificate shall not be used to purchase tax-free articles for use as supplies, etc. on pleasure vessels or any type of aircraft except:

(1) Civil aircraft employed in foreign trade or trade between the United States and any of its possessions;

(2) Aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof.

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

(I) Statement that person executing certificate is prepared to establish by satisfactory evidence the purpose for which the article(s) was used.

(J) Date, name, signature, and address of person executing the certificate.

(iv) TTB I 5600.34. A preprinted certificate, TTB I 5600.34, Exemption Certificate, which is available as provided in Sec. 53.21(b), when completed, contains all necessary information for a properly executed certificate. Extra copies of TTB I 5600.34 may be reproduced as needed.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-380, 61 FR 37006, July 16, 1996; T.D. TTB-44, 71 FR 16957, Apr. 4, 2006]

**Sec. 53.135 Tax-free sale of articles to State and local governments for their exclusive use.**

(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)(4) of the code and this section, to a State or local government for the exclusive use of such State or local government. See paragraph (b) of this section for the meaning of the term "State or local government". An article may be sold tax free by the manufacturer under this paragraph only in those cases where the sale is made directly to a State or local government for its exclusive use. Accordingly, no sale may be made tax free to a dealer for resale to a State or local government for its exclusive use, even though it is known at the time of sale by the manufacturer that the article will be so resold. A sale of an article to a State or local government for resale is not considered to be a sale for the "exclusive use" of the State or local government, within the meaning of section 4221(a)(4) of the Code, and, therefore, such sales may not be made tax free. Such sales are not exempt regardless of whether the resales are made to government employees, or the fact that the article is an item of equipment the employee is required to possess in carrying out his duties. For example, pistols or revolvers may not be sold tax free to a State or local government for resale to its police officers. See section 6416(b)(2)(C) of the Code, and paragraph (d) of Sec. 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 State or local government.

(b) State or local government. The term State or local government includes any State, the District of Columbia, and any political subdivision of any of the foregoing. See, section 7871(a)(2)(B) of the Code and 26 CFR 305.7701-1 et seq., which provide that an Indian tribal government shall be treated as a State for purposes of exemption from an excise tax imposed by chapter 32. Section 7871(b) of the Code provides that the exemption from tax applies only if the transaction involves the exercise of an essential governmental function of the Indian tribal government.

(c) Evidence required in support of tax-free sales to State or local governments. (1) In the case of a State or local government which is registered (see Sec. 53.141 for provisions under which a State or local government may register if it so desires), the provisions of paragraph (c) of Sec. 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 Sec. 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 Sec. 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]

**Sec. 53.179 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.**

(a) Evidence to be submitted by claimant. No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) of the Code and Sec. 53.178, of tax under chapter 32 of the Code shall be allowed unless the person who paid the tax submits with the claim the evidence required by Sec. 53.172(b)(2) and a statement, supported by sufficient available evidence:

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(2) of the Code and Sec. 53.177,

(2) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the article or articles and the dates of payment, and

(4) Indicating that the person claiming a credit or refund possesses evidence (as set forth in paragraph (b)(1) of this section) that the article has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) of the Code and Sec. 53.178.

(b) Evidence required to be in possession of claimant--(1) Evidence required under paragraph (a)(4)--(i) In general. The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(4) of this section, must, in the case of an article exported, consist of proof of exportation in the form prescribed in Sec. 53.133 or must, in the case of other articles sold tax-paid by that person, consist of a certificate, executed and signed by the ultimate purchaser of the article, in the form prescribed in paragraph (b)(1)(ii) of this section. However, if the article to which the claim relates has passed through a chain of sales from the person who paid the tax to the ultimate purchaser, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the article, in the form provided in paragraph (b)(1)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) Certificate of ultimate purchaser. (A) The certificate executed

and signed by the ultimate purchaser of the article to which the claim relates must identify the article, both as to nature and quantity; show the address of the ultimate purchaser of the article, and the name and address of the ultimate vendor of the article; and describe the use actually made of the article in sufficient detail to establish that credit or refund is due, except that the use to be made of the article must be described in lieu of actual use if the claim is made by reason of the sale or resale of an article for a specified use which gives rise to the overpayment.

(B) If the certificate sets forth the use to be made of any article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

(C) The certificate must also contain a statement that the ultimate purchaser understands that the ultimate purchaser and any other party may, for fraudulent use of the certificate, be subject to all applicable criminal penalties under the Internal Revenue Code.

(D) A purchase order will be acceptable in lieu of a separate certificate of the ultimate purchaser if it contains all the information required by this paragraph.

(iii) Certificate of ultimate vendor. Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax as provided in paragraph (a)(4) of this section may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and Sec. 53.178 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. A certificate supporting a claim for credit or refund under this section shall contain the following:

(A) Name of ultimate vendor if other than person executing the certificate.

(B) Statement that article(s) was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold.

(C) Description of proof which supports exportation or certificate as to use executed by ultimate purchaser.

(D) Statement that ultimate vendor retains such proof for 3 years from the date of the statement and will, upon request, supply such proof at any time within such 3 year period to the taxpayer to establish that credit or refund is due in respect of the article.

(E) Statement that to the best knowledge and belief of the person executing the certificate, no statement in respect of the proof of exportation or certificate has previously been executed and that the person executing the certificate understands that any fraudulent use of the certificate may subject the person executing the certificate or any other party to all applicable criminal penalties under the Code.

(F) Name, title, address and signature of person executing certificate and date signed.

(G) Description of all articles covered by the certificate, with the corresponding vendor's invoice number, date of resale of article, quantity, whether articles were exported or used and the use made of article or to be made of article.

(iv) TTB I 5600.33. TTB I 5600.33, Statement of Ultimate Vendor, which is available as provided in Sec. 53.21(b), when completed, contains all necessary information for a properly executed certificate. Additional copies may be reproduced as needed.

(2) Repayment or consent of ultimate vendor. If the person claiming credit or refund or an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the supporting evidence required under this section to be retained by the person claiming the credit or refund. In this regard, see Sec. 53.172(b)(2).

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-380, 61 FR 37007, July 16, 1996; T.D. TTB-44, 71 FR 16958, Apr. 4, 2006]