



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226
Number: 92-6 Date: 10/15/92

INCREASE IN FEDERAL EXCISE TAX ON TOBACCO PRODUCTS

Manufacturers of Tobacco Products, Manufacturers of
Cigarette Papers and Tubes, and Others Concerned:

Purpose. This Industry Circular is to inform you of an
upcoming increase in the Federal excise tax rates for
tobacco products and cigarette papers and tubes.

Increase in Federal excise tax rates. Public Law
101-508, 104 Stat., 1388, enacted on November 5, 1990,
increased the rate of Federal excise tax on tobacco products
and cigarette papers and tubes in two increments, effective
January 1, 1991, and January 1, 1993. As of January 1,
1993, all such products **removed** from bonded premises on or
after the effective date will be subject to the second tax
rate increase imposed by the law. For your reference, the
old and new tax rates are set forth in Exhibit 1.

There are several provisions of the law which will directly
affect businesses which manufacture, import, and distribute
these articles.

Effect on bond coverage. Manufacturers who do not
already have a maximum bond, should re-evaluate their bond
coverage. The increased tax rate may increase the liability
which must be covered by a manufacturer's bond. Proprietors
should recompute their bond coverage in accordance with
applicable regulations, using the new higher tax rates. If
present coverage is found to be insufficient, a
strengthening or superseding bond must be filed.

Effect on electronic fund transfer tax payments. The
increase in tax rates may place a taxpayer in the EFT
category for the first time. As a general rule, all
taxpayers who pay more than \$5,000,000 in tobacco products
excise taxes during a calendar year are required to pay
taxes by EFT the following year. It is the taxpayer's
responsibility to determine if EFT payment is necessary and,
if it is, to begin paying taxes by EFT. If you need
additional information or instructions for EFT payments,
contact your local ATF office.

FLOOR STOCKS TAX

As a transition to the new tax rates, the law imposes a floor stocks tax on cigarettes held for sale on January 1, 1993. This floor stocks tax does not apply to unmerchanted cigarettes or to cigarettes held in vending machines.

A floor stocks tax is a one-time excise tax placed on a commodity undergoing a tax increase. The amount of the floor stocks tax is equal to the difference between the old and new tax rates. In this case the floor stocks tax rates are, **\$2.00 per 1,000 for small cigarettes, and \$4.20 per 1,000 for large cigarettes.** Cigarettes more than 6.5 inches long will be taxed at the small cigarette rate counting each 2.75 inches, or fraction thereof, as one cigarette.

The floor stocks tax imposed by Public Law 101-508, 104 Stat., 1388, applies to cigarettes held for sale by wholesale and retail dealers as well as to taxpaid or tax determined products held by manufacturers of tobacco products factories or other facilities. Other tobacco products and cigarette papers and tubes are not subject to the floor stocks tax.

Floor stocks tax inventory. Liability for the floor stocks tax must be established either by a physical inventory or a record (book) inventory supported by the appropriate source records. Only persons with adequate records of receipt and disposition may utilize a book inventory. Records (such as invoices) used in support of a book inventory must include (1) the name and address of the consignor and consignee, (2) date of receipt or disposition, (3) brand name, (4) kind of cigarettes (large or small), and (5) quantity. Persons without such source records must take a physical inventory. The inventory may be taken anytime between December 26, 1992, and January 10, 1993. However, the inventory must be reconciled (adjusted) to the beginning of business, January 1, 1993. This reconciliation must reflect the inventory as if it had actually been taken at the beginning of business on January 1.

In-transit shipments. All merchandise subject to floor stocks tax which is in-transit must be inventoried and the tax paid by the person who owns the merchandise on January 1, 1993. Generally, with FOB shipments the shipper retains title until delivery. **All levels (manufacturers, wholesalers and retailers) should be aware that ATF will be checking in-transit shipments, as well as on hand inventories, for payment of floor stocks tax.**

Unmerchantable cigarettes. Unmerchantable cigarettes are not taxable. In this context, unmerchantable means cigarettes which are being returned through the merchandising chain because of some defect. Cigarettes which are being returned because of poor market demand or to reduce inventory are **not** considered unmerchantable. All persons holding cigarettes for sale on January 1, 1993, must physically segregate any unmerchantable cigarettes and include them in a separate section of their inventory record. Unmerchantable cigarettes should not be included when determining exemption or credit limits. If for any reason the cigarettes are not subsequently returned or destroyed, floor stocks tax must be paid on them and the ~~taxpayer~~ must file an amended floor stocks tax return. Failure to comply with these provisions can result in the assessment of interest and penalties.

Exemptions and credits. Public Law 101-508, 104 Stat., 1388, contains provisions designed to remedy some of the adverse aspects of the tax as it affects wholesale and retail dealers. If the total amount of cigarettes available for sale on January 1, 1993, does not exceed **30,000** cigarettes, the proprietor does not owe any floor stocks tax. Also, cigarettes held in any vending machine are exempt from floor stocks tax.

Proprietors with more than the above specified amounts on hand are allowed a **maximum** credit of \$60.00 that may be taken on the tax return.

Controlled groups. All members of a controlled group are considered as a single taxpayer for purposes of the exemption allowance and tax credit. Basically, a "Controlled Group" means any group of incorporated or non-incorporated businesses that have common ownership interests (including individuals, partnerships, corporations, and States or political subdivisions of States). A business is considered to be part of a controlled group if more than 50 percent of the business is owned either by, or in common with, another business (or businesses).

Floor Stocks Tax Return, ATF F 5000.28T. All proprietors holding, for sale, cigarettes subject to floor stocks tax on January 1, 1993, must complete and file a Floor Stocks Tax Return, ATF F 5000.28T. Taxpayers qualifying for the 30,000 cigarette exemption need only make a record of their inventory and complete parts I, II, and V

of ATF F 5000.28T. Detailed information and general instructions will be sent out with the floor stocks tax return form.

Proprietors will need to do some mathematical conversions since commercial packages of taxable cigarettes are not in the same unit of measure as used in the computation of the tax. Cigarettes, both large and small, are taxed by the thousand. Proprietors will have to convert their count of cigarette packs, carton and cases to thousands of cigarettes. Further information on converting inventories is provided as part of the tax return package. Proprietors who normally file monthly reports with ATF may continue to use the customary conversion factor used for their regular reports. There is no need to do conversions twice.

Proprietors should convert to taxable units at the time the inventory is taken, rather than waiting until making tax payments. Upon completion of the conversion of the inventory to taxable units, the taxpayer must enter the inventory for each product on the lines provided on the tax return, ATF F 5000.28T, and multiply by the applicable tax rates. Tax credits are deducted. Controlled groups get only one such credit for all the associated businesses. The credit may be taken in full by one member of the controlled group, or divided among the members. For further information on controlled groups or tax returns covering more than one location, and associated recordkeeping requirements, see 27 CFR 296.197(b) and (c), and 27 CFR 296.199.

Filing and payment dates. Although the inventory is required on **January 1, 1993**, proprietors are not required to file the floor stocks tax return and submit the remittance until June 30, 1993.

Electronic Fund Transfer. Manufacturers of tobacco products who pay their Federal excise tax by Electronic Fund Transfer (EFT) during 1993 will be required to make their floor stocks tax payment by EFT. **To insure proper credit, a separate EFT transfer should be made for the floor stocks tax. It should not be combined with the regular excise tax remittance.**

Retention of records. The physical inventory will be recorded in writing as it is being taken, and retained at the place of business to which the inventory pertains for a

period of at least **three years** after the filing date of the Floor Stocks Tax Return. Similarly, proprietors using a record inventory must retain the summary and supporting records for a period of **three years** after the filing date of the Floor Stocks Tax Return. The record must be made available at each proprietor's place of business for inspection by ATF officers. Civil and criminal penalties are imposed by law for failure to file, failure to pay, failure to allow officers access to premises where taxable articles are stored, failure to furnish officers access to records pertinent to tax liabilities, filing a fraudulent return, etc.

If ~~an ATF officer~~ discovers evidence of a tax liability and the taxpayer fails or refuses to make or amend a return, or to voluntarily pay the tax due, the ATF officer has the right to use the information available to prepare and sign a return for the taxpayer. On the basis of that return, the tax, along with appropriate penalties and interest, will be assessed. It will then be the taxpayer's responsibility to prove that the amount is not due.

Inquiries. If you have any questions, please contact the following ATF office in your area:

Taxpayers in:

Call or write, Technical Services, Bureau of Alcohol, Tobacco and Firearms at the following:

Illinois, Indiana, Kentucky, Michigan, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin, West Virginia

550 Main Street, Room 6525
Federal Office Bldg.
Cincinnati, OH 45202
(513) 684-3335
FAX (513) 684-3168

Connecticut, District of Columbia, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont:

The Curtis Center, Suite 875
Independence Square West
Philadelphia, PA 19106
(215) 597-2246
FAX (215) 597-7255

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia:

2600 Century Parkway NE,
Suite 305
Atlanta, GA 30345
(404) 679-5080
FAX (404) 679-5099

Taxpayers in:

Call or write, Technical Services, Bureau of Alcohol, Tobacco and Firearms at the following:

Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, Texas, and Wyoming:

1114 Commerce Street
7th Floor
Dallas, TX 75242
(214) 767-2277
FAX (214) 767-2750

Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington:

221 Main Street
11th Floor
San Francisco, CA 94105
(415) 744-7011
FAX (415) 744-9443

Daniel R. Black
Director

Exhibit 1

NEW EXCISE TAX RATES EFFECTIVE JAN. 1, 1993

TOBACCO PRODUCTS

Tobacco Product	Old Rate	New Rate
Small Cigars	\$.9375 per thousand	\$1.125 per thousand
Large Cigars	10.625% of price not to exceed \$25 per thousand	12.75 of price not to exceed \$30 per thousand
Small Cigarettes	\$10.00 per thousand	\$12.00 per thousand
Large Cigarettes	\$21.00 per thousand	\$25.20 per thousand
Cigarette Papers	0.625 cent /50 papers	0.75 cent /50 papers
Cigarette Tubes	1.25 cent /50 tubes	1.5 cent /50 tubes
Smokeless Snuff	30 cents per pound	36 cents per pound
Chewing Tobacco	10 cents per pound	12 cents per pound
Pipe Tobacco	56.25 cents per pound	67.5 cents per pound