

**§ 275.39 Determination of sale price of large cigars removed on or after January 1, 1991.**

(a) *General rule.* The tax imposed on large cigars is computed based on the price for which the large cigars are sold by the manufacturer. Large cigars are taxed at a percentage of the sale price, as prescribed by 270.21. For example, for cigars removed during 1991 and 1992, if the price for which they are sold is \$235.294 per thousand or less, the tax imposed will be 10.625% of such price. For large cigars sold for a price of more than \$235.294 per thousand, the minimum tax is \$25 per thousand for removals during 1991 and 1992. A similar computation, with the increased percent figure and maximum tax rate, is applicable for removals on or after January 1, 1993.

(b) *Price for which sold.* The “price” for which cigars are sold includes the total consideration paid for the cigars. Any charge which is made incident to placing the cigars in condition ready for use is included in the sale price. Similar rules to 26 U.S.C. 4216(a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply.

(c) *Exclusions from price.* The tax imposed by 26 U.S.C. chapter 52 or section 7652 is excluded in determining the price for which large cigars are sold. The amount of any retail sales tax imposed by any state or political subdivision thereof or the District of Columbia is likewise excluded (whether the liability for such tax is imposed on the vendor or vendee), if the retail sales tax is stated as a separate charge.

(d) *Constructive sale price rules.* Rules similar to the constructive sale price rules set forth in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4 shall be applied for purposes of determining the price for which large cigars are sold.

(e) *Readjustments in sale price.* Anticipated downward readjustments in sale price are not taken into account in computing the tax. The tax must be based upon the original price for which the cigars were sold unless the readjustments have actually been made prior to the close of the period for which the tax return is filed. However,

if the price upon which the tax was computed is subsequently readjusted, credit may be taken against the tax due on a subsequent return or a claim for refund filed as provided in § 270.286.

[T.D. ATF-307, 55 FR 52744, Dec. 21, 1990. Redesignated by T.D. ATF-381, 61 FR 37004, July 16, 1996]

LIABILITY FOR AND PAYMENT OF TAXES

**§ 275.40 Persons liable for tax.**

The importer of tobacco products cigarette papers and tubes shall be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided*, That when tobacco products or cigarette papers or tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or of a manufacturer of cigarette papers and tubes, the transferee shall become liable for the internal revenue tax on such articles upon release from customs custody and the importer shall thereupon be relieved of his liability for such tax.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85-859, Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.41 Determination of tax and method of payment.**

Tobacco products and cigarette papers and tubes, imported or brought into the United States, on which internal revenue taxes are due and payable, shall not be released from customs custody until such taxes have been determined and paid. The taxes on such articles which are determined to be due shall be paid on the basis of a return in accordance with the provisions of this part.

(68A Stat. 907, as amended, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

## EXEMPTIONS FROM TAXES

**§ 275.50 Exemptions.**

The Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and Customs Regulations, 19 CFR, chapter I, provide for certain exemptions from internal revenue taxes with respect to tobacco products and cigarette papers and tubes imported into the United States. These exemptions include, but are not limited to, certain importations in passengers' baggage, for use of crew members, and by foreign officials.

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989]

## ASSESSMENT OF TAXES

**§ 275.60 Assessment.**

Whenever any person required by law to pay internal revenue tax on tobacco products or cigarette papers or tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

## CUSTOMS' COLLECTION OF TAXES

**§ 275.62 Customs' collection of internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States.**

Internal revenue taxes on tobacco products and cigarette papers and

tubes, imported or brought into the United States, which are to be paid to a district director of customs, in accordance with this part, shall be collected, accounted for, and deposited as internal revenue collections by the district director of customs, in accordance with customs procedures and regulations:

*Provided*, That the district director of customs shall deposit the taxes collected on tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico or the Virgin Islands in the internal revenue account designated for the deposit of taxes collected on articles of Puerto Rican manufacture, or the deposit of taxes collected on articles coming from the Virgin Islands, as the case may be.

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.63 Payment of tax by electronic fund transfer.**

(a) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 270 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including similar products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

(b) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent"