

*Removal or remove.* The removal of tobacco products or cigarette papers or tubes from either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

*State.* "State" shall, for the purposes of this part, be construed to include the District of Columbia.

*Smokeless tobacco.* Any snuff or chewing tobacco.

*Snuff.* Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

*Tobacco products.* Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

*United States.* "United States" when used in a geographical sense shall include only the States and the District of Columbia.

*U.S.C.* The United States Code.

*Wholesale price.* The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Associate Director (Compliance Operations).

*Zone operator.* The person to whom the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

[T.D. ATF-48, 43 FR 13556, Mar. 31, 1978; 44 FR 55856, Sept. 28, 1979, as amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989]

## Subpart Ba—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17563, May 17, 1988, unless otherwise noted.

### § 290.31 Liability for special tax.

(a) *Export warehouse proprietor.* Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by § 290.32. The tax shall be paid on or before the date of commencing the business of an export warehouseman, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of an export warehouseman on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* An export warehouse proprietor under this part incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

### § 290.32 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(3) imposes a special tax of \$1,000 per year on every export warehouse proprietor.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any export warehouse proprietor whose gross receipts (for the most recent taxable year ending before the

first day of the taxable period to which the special tax imposed by § 290.31 relates) are less than \$500,000. The “taxable year” to be used for determining gross receipts is the taxpayer’s income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a “controlled group”; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. “Controlled group” means 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” shall be replaced by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

### § 290.33 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on Form 5630.5 shall be provided, including:

- (1) The true name of the taxpayer.
- (2) The trade name(s) (if any) of the business(es) subject to special tax.
- (3) The employer identification number (see § 290.34).
- (4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer’s principal place of business (or principal office, in the case of a corporate taxpayer).
- (5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. “Owner of the business” shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

- (1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and
- (2) Prepare, in duplicate, a list identified with the taxpayer’s name, address