

liable to the civil and criminal penalties, and forfeitures, provided by law. (72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 1991 and on January 1, 1993

AUTHORITY: Section 11202, Public Law 101-508, 104 Stat. 1388, unless otherwise noted.

SOURCE: T.D. ATF-307, 55 FR 52746, Dec. 21, 1990, unless otherwise noted.

§ 296.191 Scope of subpart.

The regulations in this subpart relate to the floor stocks tax imposed by Public Law 101-508, 104 Stat. 1388 on cigarettes held for sale on January 1, 1991, and January 1, 1993, respectively.

§ 296.192 Meaning of terms.

When used in this subpart, terms shall have the meaning prescribed below:

(a) *ATF Officer*. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

(b) *Controlled Group*. Pursuant to 26 U.S.C. 5061(e)(3), the term “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. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). 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 con-

sisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign-trade zone*. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

(d) *Person*. This term includes an individual, a trust, estate, partnership, association, company, or corporation. It also includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(e) *Regional Director (Compliance)*. The principal regional official responsible for administering regulations in this part.

(f) *Tax-increase dates*. As specified in Public Law 101-508, 104 Stat. 1388, the tax-increase dates for purposes of imposition of the floor stocks tax on cigarettes are January 1, 1991, and January 1, 1993.

§ 296.193 Alternate methods or procedures.

The Director may approve alternate methods or procedures, subject to stated conditions, where the Director finds that there is good cause for use of the alternate method or procedure, the alternate method or procedure is within the purpose of, and consistent with the effect intended by, the prescribed method or procedure, and affords equivalent security to the revenue, and the alternate method or procedure is not contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart. No alternate method or procedure relating to the assessment, payment or collection of tax, shall be authorized under this paragraph. A proprietor who wishes to use an alternate method or procedure shall submit a written application to the regional director (compliance) for transmittal to the Director. The application should describe the alternate method or procedure and the reasons for its use. The proprietor may not use an alternate method until the application has been approved by the Director. The Director may withdraw approval for any alternate method or procedure if the revenue is jeopardized

or the effective administration of this subpart is hindered by such approval.

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§ 296.194 Scope of tax.

(a) *General.* Subject to the exceptions set forth in this section, the floor stocks tax is imposed on all Federally taxpaid or tax determined cigarettes which are held by any person for sale at the first moment of the respective tax increase dates of January 1, 1991, and January 1, 1993. Cigarettes subject to floor stocks tax are regarded as held for sale by the one who owns them at the first moment of each respective tax-increase date, although at the time the articles may be in transit to the owner, or in a warehouse, storeroom or distributing depot, and shall be included in the return and inventory of the owner. If ownership does not pass to the consignee until delivery, cigarettes in transit at the first moment of each respective tax-increase date shall be regarded as owned or held by the consignor at that time.

(b) *Exception.* The floor stocks tax is not imposed on cigarettes held for sale by any person on the first moment of any tax-increase date if:

(1) The aggregate number of cigarettes held by such person on each such date does not exceed 30,000. If such person's inventory includes large cigarettes more than 6½ inches in length, each ¾ inches or fraction thereof of the length of each shall be counted as one cigarette; and

(2) Such person complies with the inventory requirements of § 296.198 and the tax return filing requirements of § 296.197 of this part. A controlled group may only claim the exception if the aggregate number of cigarettes held by all members of the controlled group on the respective tax-increase dates does not exceed 30,000.

(c) *Credit against tax.* Each person shall be allowed as a credit against the floor stocks tax imposed by paragraph (a) of this section an amount equal to \$60, or the amount of floor stocks tax for which such person is liable, whichever is less. Controlled groups are eligible for one credit amount for the entire group. Dealers who are component members of a controlled group must

apportion the \$60 credit among the members of the group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 296.197 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

(d) *Vending machines.* The floor stocks tax shall not be imposed on cigarettes held by any person in any vending machine on the first moment of each respective tax-increase date. Cigarettes owned by vending machine operators on the first moment of each respective tax-increase date and held in transit or in storage facilities on those dates and not in the vending machines are not exempt from floor stocks tax. Vending machine operators are subject to the inventory requirements of § 296.198 and the tax return filing requirements of § 296.197 of this part if they hold any cigarettes outside of vending machines on the first moment of each respective tax-increase date.

(e) *Treatment of cigarettes in foreign trade zones.* Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provisions of law, cigarettes which are held in a foreign trade zone on the first moment of January 1, 1991, or the first moment of January 1, 1993, shall be subject to floor stocks tax and shall be treated for purposes of this subpart as held on such date for sale if

(1) Internal Revenue taxes have been determined, or Customs duties liquidated, with respect to such cigarettes before such date pursuant to a request made under the first proviso of section 3(a) of such Act, or

(2) Such cigarettes are held on such date under the supervision of a Customs officer pursuant to the second proviso of section 3(a) of such Act.

(f) *Cigarettes held in bond.* The floor stocks tax does not apply to cigarettes held in ATF or customs bond on the first moment of each respective tax-increase date.

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