

members of the controlled group and reported on the various returns. A list showing the names, addresses, and employer identification numbers of all members of a controlled group shall be retained by each member who files a separate return.

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.198 Inventory.**

(a) *General.* The floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a complete physical inventory, except as provided in paragraph (b) of this section. The inventory shall be the basis for establishing the quantity of all large and small cigarettes subject to floor stocks tax held as of the first moment of the respective tax-increase dates of January 1, 1991, and January 1, 1993. Cigarettes in transit on the first moment of January 1, 1991, and on the first moment of January 1, 1993, shall be included in the inventory of the person (either consignor or consignee) who is the legal owner of the articles at that moment.

(b) *Source record inventory.* In lieu of a physical inventory, a book or record inventory may be used if supported by source records which indicate the receipt and disposition of all cigarettes subject to floor stocks tax, and reflect the actual quantity of such cigarettes on hand as if a physical inventory had been taken as of the first moment of the respective tax-increase dates. The proprietor's records must include (1) the name and address of the consignor and consignee, (2) the date of receipt or disposition, (3) brand name, (4) class of cigarettes, and length of large cigarettes, if more than 6½ inches in length, and (5) the quantity of cigarettes involved.

(c) *Record of inventory.* The inventory shall be recorded in writing as it is being taken or summarized from source records by the taxpayer and retained as prescribed in § 296.199. The record of inventory shall show the quantities of large and small cigarettes held for sale by the taxpayer at the first moment of January 1, 1991, and the first moment of January 1, 1993. Quantities in transit shall be recorded separately from quantities actually on hand.

Unmerchutable articles held for return to a supplier because of some defect are not subject to floor stocks tax, so such articles must be recorded separately from taxable items on the inventory report. (Products which are being returned because of poor market demand or to reduce inventory are not considered unmerchutable.) The record of inventory shall show the taxpayer's name and the address of the place of business where the cigarettes are held. The record of inventory shall include complete and accurate information showing the details of the inventory, when and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown.

(d) *Time of taking inventory.* The physical inventory to determine the amount of cigarettes held on the respective tax-increase dates of January 1, 1991, and January 1, 1993, may be taken no later than January 10 immediately following the respective tax-increase date and no earlier than December 26 of the preceding year. If the physical inventory is not taken between the close of business on the last respective business day of 1990 and 1992 and the beginning of business on the first respective business day of 1991 and 1993, the records of inventory shall be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 1991, and January 1, 1993, respectively; and shall include complete supporting records of receipt and disposition.

(68A Stat. 731, as amended (26 U.S.C. 6001))

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**§ 296.199 Retention of records.**

Every person liable for floor stocks tax shall keep the copy of the floor stocks tax return at the place of business covered thereby, or, in the case of a consolidated return, at the principal place of business. The record of physical inventory shall be kept at the place of business to which the inventory pertains. In the case of a consolidated return, a copy of the record of inventory shall also be kept at the taxpayer's principal place of business.

Such documents and records shall be retained for at least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The regional director (compliance) may also require these documents and records to be retained for an additional period of not more than 3 years in any case where the regional director (compliance) deems such retention to be necessary or advisable for the protection of the revenue.

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**§ 296.200 Refund of floor stocks tax.**

A claim for refund may be filed by any person who has paid a floor stocks tax on cigarettes and who claims that such person made an overpayment of that tax. Such a claim shall be filed on ATF Form 2635 (5620.8), contain the information required by the form, and be supported by a statement of the facts and evidence upon which the claim is based. The claim shall be filed with the regional director (compliance), Bureau of Alcohol, Tobacco and Firearms, for the region in which the inventory was held and on which the tax was paid. Claims filed under this section shall comply with the provisions of subpart A of this part.

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**§ 296.201 Penalties and interest.**

(a) *Penalties.* All civil and criminal penalties and forfeiture provisions of the Internal Revenue Code (title 26 U.S.C.), which are applicable to excise taxes on cigarettes, are applicable also to floor stocks tax.

(b) *Interest.* Interest shall accrue at the underpayment rate established by 26 U.S.C. 6621, compounded daily, on all floor stocks tax that is not paid on or before June 30, 1991, and/or June 30, 1993. Interest shall accrue from June 30, 1991, and/or June 30, 1993, to the date of payment. (See 26 U.S.C. 6601.)

(68A Stat. 817, as amended (26 U.S.C. 6601); sec. 7, Pub. L. 93-625, 88 Stat. 2114, as amended (26 U.S.C. 6621); sec. 344, Pub. L. 97-248, 96 Stat. 635 (26 U.S.C. 6622))

**§ 296.202 Authority of ATF officers.**

(a) *Entry of premises; penalties for interference.* Any ATF officer may enter, in the performance of official duties, in the daytime, any premises where cigarettes subject to floor stocks tax are kept, so far as may be necessary for the purpose of examining such products. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of official duties. If the owner or other person in charge of such premises refuses to admit any ATF officer, or to permit the ATF officer to examine such cigarettes, the owner or other person shall be liable to the penalty prescribed by 26 U.S.C. 7342. Further, if anyone corruptly, or by force or threats of force, attempts to intimidate or impede any ATF officer in the performance of official duties, such person shall be liable to the penalty prescribed by 26 U.S.C. 7212.

(b) *Other authority.* For the purpose of ascertaining, determining, or collecting floor stocks tax, or of inquiring into any offense connected with the administration or enforcement of floor stocks tax:

(1) Any ATF officer may examine any books, papers, records, or other data which may be relevant or material to that inquiry, and may take any testimony of any person concerned, under oath, as may be relevant or material to the inquiry.

(2) Any ATF officer, to whom authority has been delegated by § 70.22 of this chapter, in any case where there is no Justice Department referral, may issue summonses compelling the production of any books of account or other data pertaining to liability for floor stocks tax, or the appearance of any person liable for floor stocks tax or having in such person's possession such books of account or data, or any other appropriate person, at a place and time stated in the summons.

(68A Stat. 855, 872, 901, as amended, 903, as amended (26 U.S.C. 7212, 7342, 7602, 7606); sec. 204, Pub. L. 85-859, 72 Stat. 1429, as amended (26 U.S.C. 7608))