

## **Part 7. Federal Excise Taxes**

### **Vol. 7A Excise Taxes on Gas, Oil, Alcohol, Tobacco, Motor Vehicles & Other Miscellaneous Items**

#### **CHAPTER 7A:3 Excise Taxes On Tobacco, Firearms and Sporting Goods \*\***

LexisNexis Tax Advisor -- Federal Topical § 7A:3.02

#### **§ 7A:3.02 Tobacco: Operation of Excise Tax**

Excise taxes apply to tobacco products, including cigars, cigarettes, chewing tobacco, cigarette papers and cigarette tubes. The tax must be paid semi-monthly by the manufacturer or importer of the tobacco products. Tobacco products may be transferred without payment of tax to a bonded warehouse for shipment outside the United States. A credit or refund of the tax is available for tax paid on tobacco products that have been withdrawn from the market or lost due to a casualty, other than theft. Tax may also be refunded when tobacco products are lost in a presidentially declared disaster.

#### **[1] Tax Imposed on Tobacco Products**

Excise taxes are imposed on a variety of tobacco products. On cigars, manufactured in or imported into the United States, that weigh not more than three pounds per thousand, tax is imposed in the amount of \$50.33 cents per thousand for cigars removed after March 31, 2009. For cigars manufactured in or imported into the United States weighing more than three pounds per thousand (large cigars), a tax is imposed equal to 52.75 percent of the price for which sold. However, the tax imposed on large cigars cannot exceed 40.26 cents per cigar. Cigars not exempt from tax which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale. For this purpose, a cigar is any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco which is a cigarette. For purposes of the limit on tax on large cigars, any charge incident to placing the cigar in condition ready for use is included in the price. Excluded from the price is the excise tax imposed, the tax on products shipped into the United States from Puerto Rico or the Virgin Islands, and if stated as a separate charge, the amount of any retail sales tax imposed by any state or local government or the District of Columbia, regardless of who is responsible for paying the sales tax. In addition, rules similar to the rules for determining the constructive sales price of an item for the manufacturers excise tax apply. Under these rules, if an article is sold at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price, the excise tax is computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary of the Treasury. For an article sold at retail, this price is whichever of the following prices is lower:

- (1) The price for which such article is sold; or
- (2) The highest price for which such articles are sold to wholesale distributors.

On cigarettes weighing not more than three pounds per thousand (small cigarettes), manufactured in or imported into the United States, there is an excise tax imposed of \$50.33 per thousand. On cigarettes, manufactured in or imported into the United States, weighing more than three pounds per thousand (large cigarettes), there is a tax imposed of \$105.69 per thousand. However, if large cigarettes are more than 6½ inches in length, they are taxed at the rate for small cigarettes, counting each 2¾ inches, or fraction thereof, of the length of each cigarette as one cigarette. For this purpose, a cigarette is:

- Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
- Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

On cigarette papers, manufactured in or imported into the United States, an excise tax is imposed of 3.15 cents for each 50 papers or fractional part thereof. However, if cigarette papers measure more than 6½ inches in length, they are taxed at the above rate but each 2¾ inches, or fraction thereof, of the length of each paper counts as one cigarette paper. A cigarette paper is paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

On cigarette tubes, manufactured in or imported into the United States, there is imposed a tax of 6.30 cents for each 50 tubes or fractional part thereof. However, if cigarette tubes measure more than 6½ inches in length, they are taxed at the above rate, counting each 2¾ inches, or fraction thereof, of the length of each tube as one cigarette tube. A cigarette tube is cigarette paper made into a hollow cylinder for use in making cigarettes.

There is an excise tax on smokeless tobacco, manufactured in or imported into the United States. Smokeless tobacco includes any snuff or chewing tobacco. The tax on snuff is \$1.51 per pound. On chewing tobacco, the tax is \$50.33 per pound. The taxes on snuff and chewing tobacco are imposed at a proportionate rate on all fractional parts of a pound. Snuff is any finely cut, ground, or powdered tobacco that is not intended to be smoked. Chewing tobacco is any leaf tobacco that is not intended to be smoked.

On pipe tobacco, manufactured in or imported into the United States, there is a tax of \$2.8311 cents per pound. The tax is imposed at a proportionate rate on all fractional parts of a pound. Pipe tobacco is any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

On roll-your-own tobacco, manufactured in or imported into the United States, there is a tax of \$24.78 per pound and a proportionate tax at the same rate on all fractional parts of a pound. Roll-your-own tobacco is any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

The amount of tax imposed is determined at the time of removal of the tobacco products and cigarette papers and tubes. Removal is the removal of tobacco products or cigarette papers or tubes or any processed tobacco from the factory or from internal revenue bond or release from customs custody. Removal also includes the smuggling or other unlawful importation of these articles into the United States.

The above taxes on imported tobacco products and cigarette papers and tubes are in addition to any import duties imposed on these articles, unless the import duties are imposed in lieu of the excise taxes.

As noted in several footnotes above, Public Law 111-3, *the Children's Health Insurance Program Reauthorization Act of 2009*, which was signed into law by President Obama on February 4,

2009, dramatically increased the excise taxes on tobacco products. The act also contains a provision imposing a floor stocks tax on tobacco products and cigarette papers and tubes manufactured in or imported into the United States which are removed before April 1, 2009, and held on such date for sale by any person. The increased excise taxes apply to articles removed after March 31, 2009. The amount of the tax imposed is an amount equal to the excess of: (1) the tax which would be imposed under Section 5701 on the article if the article had been removed on such date, over (2) the prior tax (if any) imposed under Section 5701 on such article. Each person is allowed a credit in the amount of \$500 against the floor stocks tax. A person holding tobacco products, cigarette papers, or cigarette tubes on April 1, 2009, to which the floor stocks tax applies is liable for the tax, and the tax is to be paid on or before August 1, 2009.

The floor stocks tax also applies to any article located in a foreign trade zone on April 1, 2009, if: (1) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the first proviso of section 3(a) of the *Foreign Trade Zone Act*, or (2) such article is held on such date under the supervision of an officer of the United States Customs and Border Protection of the Department of Homeland Security pursuant to the second proviso of such section 3(a).

In addition, all provisions of law, including penalties that apply to the Section 5701 taxes, apply to the floor stocks taxes to the same extent as if such taxes were imposed by Section 5701.