

§ 46.193

27 CFR Ch. I (4–1–10 Edition)

5701(a)(2)), cigarette papers, and cigarette tubes that are held for sale on April 1, 2009.

(c) *Cigarette paper*. Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(d) *Cigarette tube*. Cigarette paper made into a hollow cylinder for use in making cigarettes.

(e) *Controlled group*. A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations*. The term “controlled group of corporations” has the meaning given to that term by 26 U.S.C. 1563(a) and the implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each time it appears. Controlled groups of corporations include, but are not limited to:

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

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

(iii) Combined groups as defined in 26 CFR 1.1563–1T(a)(4).

(2) *Nonincorporated dealers under common control*. A group of dealers is considered to be a controlled group when the group would qualify as a controlled group of corporations, except for the fact that one or more of the dealers is not incorporated.

(f) *Dealer*. A person or other entity holding articles subject to floor stocks tax for sale on April 1, 2009, including manufacturers, importers, wholesalers, and retailers.

(g) *Floor stocks tax*. A tax imposed on all Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes held for sale on April 1, 2009. The floor stocks tax is the difference between the previous excise tax rate and the new excise tax rate.

(h) *Foreign trade zone*. A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(i) *Person*. An individual, trust, estate, partnership, association, company, or corporation, any State, including the District of Columbia, or po-

litical subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(j) *Tobacco products*. Cigars, cigarettes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco as described in 26 U.S.C. 5702(a), (b), (m)(2), (m)(3), (n) and (o), respectively.

§ 46.193 Persons liable for floor stocks tax.

A dealer who holds for sale any articles subject to floor stocks tax on April 1, 2009, is liable for floor stocks tax. See §§ 46.204 and 46.205 regarding articles subject to floor stocks tax that are in transit on April 1, 2009 and § 46.206 regarding articles subject to floor stocks tax that are held in a foreign trade zone on April 1, 2009.

§ 46.194 Persons not liable for floor stocks tax.

A person who does not meet the definition of a dealer is not liable for the floor stocks tax under this subpart.

§ 46.195 Floor stocks requirements.

(a) *Take inventory*. The dealer must establish the quantity of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer may take a physical inventory or may use a record (book) inventory, as specified in § 46.202 or § 46.203.

(b) *Compute tax*. The dealer must compute the amount of tax for the articles held for sale on April 1, 2009. Refer to the table in § 46.222. The dealer may apply the tax credit as provided in § 46.223.

(c) *File tax return and pay tax*. After computing the floor stocks tax, the dealer must file a return even if no tax is due. See § 46.233 for payment methods if tax is due.

(d) *Maintain records*. The dealer must maintain all records used to determine the quantity of articles subject to floor stocks tax and the quantity of articles held for sale on April 1, 2009 that are not subject to floor stocks tax. The dealer must also maintain records of all computations used to determine the amount of tax owed. Refer to § 46.241.

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INVENTORIES

§ 46.201 General.

(a) *Date.* The dealer must take an inventory to establish the quantities of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer must take the physical inventory or record (book) inventory not earlier than March 26, 2009 and not later than April 10, 2009.

(b) *Reconciliation.* If the dealer takes a physical inventory on any day other than April 1, 2009, the resulting records must be reconciled to reflect the actual quantity of articles held at 12:01 a.m. on April 1, 2009. These records must include all supporting records of receipt and disposition.

(c) *Method.* The dealer may take a physical inventory in accordance with § 46.202 or a record (book) inventory in accordance with § 46.203. The following table lists the taxable articles and the method to use for each to determine quantities:

Article	Inventory method
Small cigarettes	Count the number of cigarettes.
Large cigarettes 6½" or less in length.	Count the number of large cigarettes.
Large cigarettes more than 6½" in length.	Keep a separate count for each size of large cigarette. Count each 2¾", or fraction thereof, as one small cigarette.
Small Cigars	Count the number of small cigars.
Snuff	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Chewing tobacco ...	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Pipe tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Roll-your-own tobacco.	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Cigarette papers 6½" or less in length.	Count the number of cigarette papers, divide by 50, and round up if there is any remainder.
Cigarette papers more than 6½" in length.	Count the number for each size of cigarette paper. Count each 2¾", or fraction thereof, as new cigarette paper. Divide adjusted total by 50 and round up if there is any remainder.
Cigarette tubes 6½" or less in length.	Count the number of cigarette tubes, divide by 50, and round up if there is any remainder.

Article	Inventory method
Cigarette tubes more than 6½" in length.	Count the number for each size of cigarette tube. Count each 2¾", or fraction thereof, as one cigarette tube. Divide adjusted total by 50 and round up if there is any remainder.

§ 46.202 Physical inventory requirements.

The dealer's physical inventory must result in a written record of:

- (a) The quantity and type of each article subject to floor stocks tax recorded in sufficient detail to determine the tax rate as stated in § 46.222. See the table in § 46.201(c) for the information required for each type of article;
- (b) The date and time the inventory was taken;
- (c) The name of the individual(s) conducting the inventory and the name of the dealer for whom the inventory was taken; and
- (d) The location where the inventory was taken (street address, city and State).

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§ 46.203 Record (book) inventory requirements.

(a) The dealer may use a record (book) inventory if the dealer has source records that show:

- (1) The quantities of receipts and dispositions of all articles subject to floor stocks tax;
 - (2) The types and quantities of articles actually on hand as if a physical inventory had taken place on April 1, 2009. See the table in § 46.201(c) for the information required for each type of article;
 - (3) The name and address of the consignor and consignee. For over the counter sales by retail dealers, the consignee name and address is not required;
 - (4) The date of receipt or disposition of the articles; and
 - (5) The brand name of each product.
- (b) If the dealer does not take the inventory as of the close of business on the last business day before April 1, 2009, the records must be reconciled as provided in § 46.201(b).

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