§ 40.22  Determination of sale price of
large cigars.

(a) General rule. The tax imposed on
large cigars is computed based on the
sale price (the price for which the large
cigars are sold by the manufacturer).
In addition to money, goods or services
exchanged for cigars may be considered
as part of the sale price.

(b) Special cases—(1) In general. If
there is any question concerning the
applicable sale price for tax purposes,
the appropriate TTB officer will deter-
mine such price, applying rules similar
to the constructive sale price rules in
26 U.S.C. 4216(b) and the implementing
regulations in 26 CFR 48.4216(b)–1
through 48.4216(b)–4. These construc-
tive sale price rules apply to cigars
sold by a manufacturer at retail, sold
on consignment, or sold (otherwise
than through an arm’s length trans-
action) at less than the fair market
price. Sales of cigars between affiliated
corporations may be analyzed under
the constructive sale price rules. The
appropriate TTB officer may make this
analysis on his or her own initiative or
upon the written request of a manufac-
turer. If TTB decides it is necessary,
we will publish constructive sale price
determinations in the TTB Bulletin in
accordance with § 70.701(d) of this chap-
ter.

(2) Adjustments in sale price—(i) Rea-
sons for adjustment. Adjustments to the
sale price may occur as a result of a
discount or price increase by the manu-
facturer or as a result of a TTB deter-
mination pursuant to paragraph (b)(1)
above. In either case, the manufacturer
must make conforming changes to the
tax that was computed on the sale
price before the adjustment.

(ii) Time of adjustment. If an adjust-
ment is made before the end of the
same tax return period as the original
determination of the tax, the adjust-
ment may be made on the same return.
If the price is increased or decreased
retroactively (during a later return pe-
riod), either by the manufacturer or by
TTB’s determination, the manufac-
turer must make an adjustment on the
tax return for the current return pe-
riod in which the price change was
determined.

(iii) Amount of adjustment. The tax-
payer must compute the adjustment to
the tax as the difference between the
tax that was paid and the tax that
should have been paid, based on the
newly determined sale price, together
with interest thereon and any applica-
able penalties. The interest must be
computed from the time of payment of
the original tax until the time the ad-
justment was made. Upon request, the
appropriate TTB officer will provide in-
formation regarding interest rates ap-
plicable to specific time periods and
any applicable penalties.

(3) Pricing for different packaging. If
different bona fide sale prices are appli-
cable to different types of packaging (e. g.,
boxes of 25 and boxes of 50), then the
cigars in each type of packaging are
taxed on the basis of their respective
sale prices.

(4) Pricing of seconds. If some of an
otherwise identical cigar brand and
size:

(i) Are distinctive from other such ci-
gars because of physical imperfections,

(ii) Are offered to the consumer
through clear labeling as “imperfects”,
“seconds”, “throw-outs”, or a com-
parable commonly understood term,

(iii) The manufacturer has a separate
sale price for such cigars, then they are
taxed on the basis of this separate sale
price.

(5) Combination packages. If a manu-
facturer has a sale price for a combina-
tion package containing cigars of dif-
ferent sizes, the cigars are taxed based
on that combination sale price. If there
is no sale price for the combination,
then the cigars are taxed based on
their individual sale prices.

(6) Removals for another person. If a
manufacturer makes taxable removals
of a brand and size of cigar only for dis-
tribution by others who establish the
sale price, the tax is based on such sale
price even though the manufacturer
who makes the removals does not es-
tablish the price.

[T.D. ATF–420, 64 FR 71939, Dec. 22, 1999, as
amended by T.D. TTB–91, 76 FR 5479, Feb. 1,
2011]

§ 40.23  Cigarette tax rates.

Cigarettes are taxed at the following
rates under 26 U.S.C. 5701(b):