

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 53**

[T.D. TTB-62]

RIN 1513-AB25

**Firearms Excise Tax; Exemption for Small Manufacturers, Producers, and Importers (2005R-449P)****AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This final rule amends the regulations administered by the Alcohol and Tobacco Tax and Trade Bureau to reflect the small manufacturers excise tax exemption added by section 11131 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Section 11131 amended section 4182 of the Internal Revenue Code of 1986 to exempt any pistol, revolver, or firearm from excise tax if it was manufactured, produced, or imported by a person who manufactures, produces, or imports less than an aggregate of 50 such articles during the calendar year.

**DATES:** *Effective Date:* September 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Karl O. Joedicke, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202-927-8210; or e-mail [Karl.Joedicke@ttb.gov](mailto:Karl.Joedicke@ttb.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Section 4181 of the Internal Revenue Code of 1986 (IRC) imposes a tax on the sale of firearms, shells, and cartridges by the manufacturer, producer, or importer. In addition, under section 4218 of the IRC, the use by a manufacturer, producer, or importer of firearms, shells, and cartridges is taxable as if it were a sale, except in limited circumstances. See 27 CFR 53.111 *et seq.* The tax is assessed at the rate of 10 percent of the sale price for pistols and revolvers, 11 percent of the sale price for firearms other than pistols and revolvers, and 11 percent of the sale price for shells and cartridges. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for administering the provisions of the IRC pertaining to the collection of the excise tax on firearms and ammunition. The TTB regulations relating to section 4181 and related

provisions of the IRC are contained in part 53 of the TTB regulations (27 CFR part 53).

**Exemptions and Legislative Change**

Section 4182 of the IRC (26 U.S.C. 4182) provides for certain exemptions from the tax imposed by section 4181. Prior to October 1, 2005, those exemptions covered only sales to the Department of Defense and the Coast Guard (when purchased with funds appropriated for the military department), and transactions where the National Firearms Act Transfer Tax (imposed by IRC section 5811) had been paid. However, on August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59, 119 Stat. 1144 (the Act). Section 11131 of the Act added a new subsection (c) to IRC section 4182 to exempt any pistol, revolver, or firearm from the tax imposed by section 4181 if it was manufactured, produced or imported by a person who manufactures, produces, or imports less than an aggregate of 50 such articles during the calendar year.

**Applicability and Restrictions***The 50-Firearm Limitation*

If a person manufactures, produces, or imports 50 or more firearms during the calendar year, he or she would be liable for tax on the first 49 firearms sold, as well as on all additional firearms manufactured, produced, or imported for the remainder of the calendar year, regardless of when they are sold.

*Each Calendar Year Stands Alone*

The new exemption provision states that the tax under section 4181 does not apply to any pistol, revolver, or firearm described in section 4181 "if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year." Thus, application of this exemption is based on the calendar year in which the manufacture, production, or importation of the articles in question took place and does not depend on when the sale occurs. In addition, each calendar year stands alone for purposes of applying the exemption. The following examples illustrate application of this exemption:

*Example 1:* Company A manufactures 20 firearms in calendar year 2006 but does not sell any of them in calendar year 2006. Company A then manufactures 40 firearms in calendar year 2007 and sells all 60 firearms (the 20 manufactured in 2006 plus the 40 manufactured in 2007) in 2007. Company A would not owe tax on the 60 firearms sold

in 2007 since Company A manufactured only 20 of those firearms in calendar year 2006 and only 40 in calendar year 2007.

*Example 2:* Company B imports 49 firearms in calendar year 2006, 49 firearms in calendar year 2007, and 20 firearms in calendar year 2008. Company B sells all 118 of these firearms in 2008. Company B would not owe tax on these 118 firearms since Company B imported less than 50 firearms in 2006, less than 50 firearms in 2007, and less than 50 firearms in 2008.

*Example 3:* Company C manufactures 50 firearms in calendar year 2006, 50 firearms in calendar year 2007, and 20 firearms in 2008. Company C sells all 120 of these firearms in 2009. Company C would be liable for tax on 100 of these firearms (the 50 firearms manufactured in 2006 and the 50 firearms manufactured in 2007, but not the 20 firearms manufactured in 2008).

*Controlled Groups*

The new statutory provision incorporates the controlled group provisions of IRC section 52(a) and (b) in determining whether the 50-gun exemption applies. Therefore, entities in the same controlled group must aggregate their manufacture, production, and importation figures in making this determination.

**Effective Date**

The subsection (c) exemption applies only to articles sold by the manufacturer, producer, or importer after September 30, 2005. In this regard, section 11131(b) of the Act includes the following note to 26 U.S.C. 4182:

(2) *No inference.* Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

The 50-gun exemption, therefore, does not affect the tax liability of a manufacturer, producer, or importer with respect to articles sold prior to October 1, 2005.

**Regulatory Flexibility Act**

Because a notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the requirements of this Executive Order.

**Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirement**

Based on the October 1, 2005, effective date of the statutory change in

section 11131, TTB believes it must amend and conform its regulations to the statutory change contained in section 11131 of the Act as soon as practical. Without this regulatory amendment, the existing TTB regulations would not reflect the new tax exemption. Moreover, the regulatory amendment simply restates the requirements arising from the statutory amendment and recognizes an exemption. Therefore, we find that good cause exists to publish this final rule without notice, public comment, or delayed effective date because the regulatory amendment simply reflects the statutory exemption and requirements that are already effective. The promulgation of this regulation without notice, comment, or delayed effective date ensures that affected industry members will have knowledge of the regulatory requirements that will enable them to obtain the benefits of the statutory change. Accordingly, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(1) and (3), a notice, public comment procedure, and delayed effective date are unnecessary.

#### Drafting Information

The principal author of this document is Karl O. Joedicke, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

#### List of Subjects in 27 CFR Part 53

Arms and munitions, Electronic funds transfers, Excise taxes, Exports, Imports, Reporting and recordkeeping requirements.

#### Amendment to the Regulations

■ For the reasons discussed in the preamble, title 27, chapter I, part 53 of the Code of Federal Regulations is amended as follows:

#### PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

■ 1. The authority citation for part 53 is revised to read as follows:

**Authority:** 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502, 7805.

■ 2. Section 53.62 is amended by adding a new paragraph (c) to read as follows:

#### § 53.62 Exemptions.

\* \* \* \* \*

(c) *Small manufacturers, producers, and importers*—(1) *Exemption*. Section 4182(c) of the Code provides that the tax imposed by section 4181 of the Code shall not attach to any pistol, revolver,

or firearm manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of those articles during the calendar year, regardless of when the articles are sold.

(2) *Controlled groups*. All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 of the Code are treated as one person for purposes of paragraph (c)(1) of this section.

(3) *Applicability*. The exemption described in paragraph (c)(1) of this section applies to articles sold by the manufacturer, producer, or importer after September 30, 2005. Application of this exemption is based on the calendar year in which the manufacture, production, or importation of the articles in question took place and does not depend on when the sale occurs. In addition, each calendar year stands alone for purposes of applying the exemption.

Signed: May 9, 2007.

**John J. Manfreda,**

*Administrator.*

Approved: July 11, 2007.

**Timothy E. Skud,**

*Deputy Assistant Secretary Tax, Trade, and Tariff Policy.*

**Editorial Note:** This document was received at the Office of the Federal Register on September 6, 2007.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. CGD05–07–085]

RIN 1625–AA00

#### Safety Zone; Chesapeake Bay, Susquehanna River, Havre de Grace, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in waters of the Susquehanna River within a 50-yard radius of pier number 5 of the old US-40 Highway bridge (bridge number 1206000). The bridge is located at approximate position latitude 39°33'11" N, longitude 076°05'09" W. This safety zone is necessary to provide for the safety of life, property and the environment on navigable waters of the U.S. This safety zone restricts the

movement of vessels in a portion of the Susquehanna River, in order to facilitate the marking as a hazard to navigation and the removal of the heavily damaged abandoned masonry bridge pier structure located near Havre de Grace, in Harford County, Maryland.

**DATES:** This rule is effective from 12 p.m. on August 27, 2007, until 12 p.m. on September 24, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–07–085 and are available for inspection or copying at Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Ronald L. Houck, Waterways Management Division, at (410) 576–2674.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to the public interest, because there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels against the hazards associated with a heavily-damaged masonry bridge pier structure located adjacent to the navigation channel and its removal. Such hazards include further damage to the structure by mariners and the possible collapse of the structure with falling stone debris.

##### Background and Purpose

On August 23, 2007, the Captain of the Port Baltimore, Maryland was notified by the Maryland State Highway Administration that during an inspection of an adjacent highway bridge a contracted bridge inspector noticed that further damage to pier number 5 of the old US-40 Highway bridge (bridge number 1206000) existed three or four days prior. The pier number 5 bridge structure was damaged in May 2005. The bridge pier is among a line of 12 other similar structures crossing the Susquehanna River between Harford County, Maryland and Cecil County, Maryland. Due to the need for vessel control during the marking of the bridge as a hazard to