

(1) *Death.* The surviving spouse or child, or the executor, administrator, or other legal representative, of a deceased taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her living spouse;

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after the death or withdrawal of a member of a partnership.

(26 U.S.C. 5733)

STAMPS FOR INCORRECT PERIOD OR
INCORRECT LIABILITY

§ 46.131 General.

If a taxpayer through error has filed a return and paid special tax for an incorrect period of liability or for an incorrect class of business, the taxpayer must prepare a corrected TTB Form 5630.5t, designated "Amended Return," for each tax year involved and must submit the amended return, or returns, with remittance for the total applicable tax and additions to the tax (delinquency penalties and interest), to TTB in accordance with the instructions on the Form 5630.5t or, if the error is discovered by a TTB officer inspecting the premises, to that officer. Subject to the limitations imposed by 26 U.S.C. 6511, the incorrectly paid tax (including additions thereto) may be allowed as a credit against the correct tax (including any additions thereto), as provided in § 46.132, on surrender of the incorrect stamp or stamps, with the amended return or returns noted to show that credit is requested. Any incorrectly paid tax (including additions thereto) that is not credited as provided in § 46.132, including any creditable tax and additions thereto in excess of the correct tax (including additions thereto), may be refunded pursuant to §§ 46.136 through 46.138 if the taxpayer files a corrected return on Form 5630.5t with remittance of the correct amount of tax (including any additions thereto). A new stamp will be issued only for a current period of liability.

(26 U.S.C. 6011)

§ 46.132 Credit for incorrect stamp.

(a) *General.* The appropriate TTB officer may credit the tax (including additions thereto) paid for an incorrect stamp if the taxpayer has filed an amended return showing the correct tax on TTB Form 5630.5t and has, with the amended return, surrendered the incorrect stamp for credit.

(b) *Underpayment.* Where the correct tax (including any additions thereto) exceeds the incorrect tax paid, the appropriate TTB officer may credit the tax paid against the correct tax upon remittance of the difference between the tax paid and the correct tax plus any additions thereto.

(c) *Overpayment.* Where the tax (and additions thereto) paid for the surrendered incorrect stamp exceeds the amount due, the appropriate TTB officer will advise the taxpayer to file a claim for refund of that excess on TTB Form 5620.8. Sections 46.136 through 46.138 apply to all claims for refund.

(26 U.S.C. 6402, 6511)

ABATEMENT OR REFUND OF SPECIAL
TAXES

§ 46.136 Claims.

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), must be filed on TTB Form 5620.8. The claim must be filed with the appropriate TTB officer. Each claim must set forth in detail each ground on which it is based and must contain facts sufficient to explain to the appropriate TTB officer the exact basis for the claim. If the claim is for refund of special tax for which a stamp was issued, either the stamp must be attached to and be made a part of the claim, or the claimant must include in the claim a satisfactory explanation of the reason why the stamp cannot be submitted.

§ 46.137 Time limit on filing of claim for refund.

No claim for the refund of a special tax or penalty will be allowed unless presented within 3 years after the filing of the related tax return or within 2 years after the payment of such tax

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or penalty, whichever of these periods expires later.

(26 U.S.C. 6511)

§ 46.138 Discontinuance of business.

A dealer who for any reason discontinues business is not entitled to a refund of special tax for the unexpired portion of the tax year for which the special tax stamp was issued.

(26 U.S.C. 5732)

Subparts E–F [Reserved]

Subpart G—Dealers in Tobacco Products

SOURCE: T.D. 6573, 26 FR 8202, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 46.161 Scope of subpart.

The regulations in this subpart relate to the purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

[T.D. 6871, 81 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 46.162 Territorial extent.

The provisions of the regulations in this subpart shall apply in the several States of the United States and the District of Columbia.

§ 46.163 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, and words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not enumerated which are in the same general class.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement

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of this part by TTB Order 1135.46, Delegation of the Administrator’s Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

Dealer. Any person who sells, or offers for sale, at wholesale or retail levels, any cigars or cigarettes after removal.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person’s own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which tobacco products are put up by the manufacturer or the importer and offered for delivery to the consumer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Removal or remove. The removal of tobacco products from the factory or release from Customs custody, including the smuggling or other unlawful importation of such articles into the United States.

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

U.S.C. The United States Code.

[T.D. 6573, 26 FR 8202, Aug. 31, 1961, as amended by T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.163, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 46.164 Authority of TTB officers to enter premises.

Any appropriate TTB officer may enter in the daytime any premises where tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any appropriate TTB officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same,