



**DEPARTMENT OF THE TREASURY
ALCOHOL & TOBACCO TAX AND TRADE BUREAU**

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GUNSMITH INFORMATION

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The following information should help you determine if your activities make you a gunsmith (or your customers) liable for Federal Firearms and Ammunition Excise Tax (FAET).

GENERAL INFORMATION

Title 26, United States Code, Section 4181 imposes a tax upon the sale by the manufacturer, producer or importer of pistols, revolvers, firearms (other than pistols and revolvers) and shells and cartridges. Title 27, Code of Federal Regulations (CFR), Section 53.11 defines “firearms” as any portable weapons, such as rifles, carbines, machine guns, shotguns, or fowling pieces, from which a shot, bullet or other projectile may be discharged by an explosive. In addition, based on this definition, antique firearms (e.g., black powder or other types of firearms that do not use fixed ammunition) fall under the definition of a firearm for excise tax purposes.

Title 26, United States Code, Section 4218 provides that if any person manufactures, produces or imports an article and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another taxable article under Chapter 32 to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

Title 27 CFR, Section 53.11 defines the term “manufacturer” as any person who produces a taxable article from scrap, salvage, or junk material, or from new or raw material, by processing, manipulating, or changing the form of an article or by combining or assembling two or more articles. The term also includes a “producer” and an “importer”. A manufacturer is an individual or an entity that

has an ownership interest in the firearm prior to its sale or use. In situations where a person manufactures or produces a taxable article for another person who furnishes materials under an agreement whereby the person who furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

Title 26 U.S.C., Section 4182 provides an exemption from the firearms and ammunition excise tax as to any pistol, revolver or firearm (article) if it was manufactured, produced or imported by a person who manufactures, produces or imports less than an aggregate of 50 such articles during a calendar year. Please see the enclosed information sheet titled “**50 Gun Exemption to Firearms and Ammunition Excise Tax (FAET)**” that provides information on this exemption.

ATTACHMENT OF TAX

In general, two events must occur for the FAET to apply to the alteration or modification of any firearm:

1. An act of manufacture involving a firearm must occur.
2. The person who is responsible for the act of manufacture must sell the firearm or use it for a business use.

To be considered an “act of manufacture,” alterations must materially change a firearm so that a different article results. Modifications to a firearm that significantly change the function of a firearm also amount to manufacture. The following are some examples of “events” that may or may not constitute manufacturing:

- When existing parts of a firearm are replaced, refinished or repaired, no manufacture takes place. However, if parts are added to a frame, receiver or action, such alterations are generally found to be manufacture. Additionally, when custom firearms are produced from new or used firearms acquired by a gunsmith, as when surplus military firearms are “sporterized” and the custom firearms are a new and different type of firearm, then manufacture has taken place.
- Cutting off part of the barrel of a firearm is, of itself, an act of manufacture.

- Refinishing a firearm, as in bluing or black anodizing does not change the form of a firearm and would generally not be considered an act of manufacture.
- Checkering is also an activity that does not normally change the form of a firearm and would generally not be an act of manufacture.
- Engraving performed on a firearm could be considered an act of manufacture when the engraving *substantially increases* the value of a firearm. Engraving that does not *substantially increase* the value of the firearm is generally not an act of manufacture.
- The cutting of trapezoidal/oval ports into the side of the barrel of a handgun or long gun to reduce recoil and muzzle lift would not amount to manufacture.
- Excise tax is not imposed on the sale of parts or accessories of firearms, pistols, revolvers, shells and cartridges when sold separately or when sold with a complete firearm for use as spare parts or accessories.
- It should be noted that FAET applies to the sales of **complete firearms**. A frame or receiver for a firearm is not a complete firearm and is not subject to FAET.
- However, a manufacturer who sells a firearm in a knockdown condition, which is complete as to all component parts, will be liable for FAET. Liability for FAET will be incurred whether the component parts are sold in one transaction or a series of separately invoiced transactions.

The second part of determining whether FAET applies concerns whether the person who is responsible for the act of manufacture has sold or used the firearm. Let us assume that a gunsmith's alterations to a firearm for a customer amount to an act of manufacture as detailed in the following scenarios:

- In a situation where a customer supplies a firearm to a gunsmith for modification, the customer is usually considered to be the manufacturer for FAET purposes. The customer is considered to be the manufacturer because he directs what type of modification is to be done to the firearm and he retains title to the firearm while it is being modified. Even though the gunsmith performs the physical modifications to the firearm, he would not usually be considered the manufacturer for FAET purposes in this situation.

However, an exception to the above example is where the alterations are made in connection with the sale of the firearm by the gunsmith. Where the gunsmith is selling the firearm to the customer, and in connection with that sale, the gunsmith performs alterations that constitute manufacture, the sale of the altered firearm results in tax liability. The clearest example of this situation is where the gunsmith offers to customize a firearm to the customer's specifications prior to sale. The tax liability cannot be avoided by merely breaking the transaction into two parts, i.e., selling the firearm and subsequently performing the manufacture.

- If the manufacture is done in connection with the sale of a firearm, the gunsmith is liable for tax, whether he performs the act of manufacture before or after the sale. In the latter instance, the Alcohol & Tobacco Tax & Trade Bureau (TTB) will adhere to Internal Revenue Service (IRS) rulings in this area and blend the sale and the subsequent manufacture into one transaction. The substance of the transaction will control, not the form.
- Where the gunsmith is not selling the firearm to the customer, or in circumstances where the sale and subsequent alterations are truly separate transactions, the customer is deemed to be the manufacturer. In these situations, tax liability, if any, would fall on the customer.

WHO IS THE TAXPAYER?

Once a determination has been made as to whether an act of manufacture has occurred (and the manufacturer has been identified), we then must determine if the manufacturer is liable for FAET. This determination will depend on what is done with the firearm after the gunsmith has completed his work.

- If the manufacturer sells the firearm before using it, he is liable for the FAET. If the manufacturer uses the firearm for personal (not business) use after delivery from the gunsmith, no tax liability is incurred. The regulations specifically provide that the tax does not apply to a firearm that has been manufactured for personal use. (See 27 CFR 53.112(b).)
- If the manufacturer uses the firearm in the operation of any business in which he is engaged, tax liability would be incurred. (See 26 U.S.C. 4218 and 27 CFR 53.112(a).)

- FAET is calculated on the specified percent of the price for which the firearm is sold. The tax rate is 10 percent for pistols and revolvers and 11 percent for all other firearms. (See 26 U.S.C. 4181 and 27 CFR 53.61.)
- If a gunsmith acquires title to a firearm, performs modifications on the firearm which amount to an act of manufacture, and then sells the firearm, tax would be calculated on the price for which he sold the firearm. If the gunsmith previously sold the firearm to the customer and subsequent to the sale, performs an act of further manufacture on the firearm at the customer's request, the gunsmith will be liable for FAET on his manufacture, if the manufacture is performed in connection with the original sale. Under these circumstances, the tax will be based on the price charged to the customer for the original sale of the firearm plus the charges for the subsequent modifications.

CALCULATION OF TAX

Section 4216(a) of the Internal Revenue Code and the regulations issued thereunder also provide for certain inclusions and exclusions from the price which must be taken into account when determining the tax basis. (See 26 U.S.C. 4216(a) and 27 CFR 53.91 and 53.92 for the inclusions and exclusions which must be applied to the price to determine an adjusted sale price.)

- Ordinarily, the tax rate is applied to the adjusted sale price to determine the amount of a manufacturer's tax liability on each firearm manufactured. However, if an article is sold only at retail (i.e., directly to consumers), Section 4216(b)(1)(C) of the Internal Revenue Code requires that a constructive sale price be determined. The constructive sale price for firearms sold at retail by manufacturers who do not sell like articles to wholesale distributors is 75 percent of the actual selling price, after taking into account the inclusions and exclusions set forth above. Further, most gunsmiths sell directly to consumers, with no sales to wholesale distributors. Assuming this is the case in the examples provided above, the tax rate of 10 or 11 percent would be applied to 75 percent of the adjusted sale price to determine the amount of the gunsmith's tax liability for each gun manufactured. If you have any questions about the use or calculation of a constructive sale price, please contact TTB's FAET Group at the numbers listed below.

- If any person, such as the manufacturer, importer or producer had previously paid FAET on a firearm that a gunsmith subsequently customizes and sells, the gunsmith may be eligible to claim a refund on *TTB Form 5620.8, Claim – Alcohol, Tobacco and Firearms Taxes or take a credit on the FAET return (TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return) for the tax previously paid. (See 27 CFR 53.180, 53.182 and 53.185 for details on how to file a claim or take a credit.)

TAX-FREE REGISTRATION

A gunsmith who intends to purchase firearms for further manufacture may want to register as a tax-free purchaser to receive the firearms without payment of FAET. *TTB Form 5300.28, Application for Registration for Tax-Free Transactions Under 26 U.S.C. 4221, is used as the application to register. This will eliminate the gunsmith's payment of FAET when purchasing the firearm from the original manufacturer and the need to claim refunds or take tax credits.

PAYMENT OF FAET

- You must file *TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return to report Federal Firearms and Ammunition Excise Tax (FAET) required by Title 26, United States Code, Section 4181.
- Complete instructions for completion and mailing of the above form are included with the form. If you determine that you are the FAET taxpayer, please contact the FAET Group at the National Revenue Center at the above letterhead address for a FAET Information Packet.

*All the above mentioned TTB Forms can be downloaded from the TTB website at www.ttb.gov (Forms Page).

The above are some basic guidelines in determining if certain gunsmithing activities are subject to excise tax.

Please see the **Sample Scenarios** enclosed for your information (Pages 8-11).

If you have additional specific circumstances not addressed above, please feel free to send your information to this office at the above letterhead address and we will promptly respond to your specific circumstances.

If you have any questions, you may contact our office at the above letterhead address, call 513-684-3817 or toll-free at 877-882-3277 or send an e-mail to ttbfaet@ttb.gov.

Enclosures:

- Sample Scenarios
- 50 Gun Exemption Information Sheet

SAMPLE SCENARIOS

Scenario #1

X
Sells new or used barrel and action to A

A
Installs a sight and stock

Customer
Purchases complete firearm.

A is liable for FAET since A has assembled (manufactured) and sold complete firearm to customer.

SCENARIO #2

SUPPLIER
Sells used military-type firearms to gunsmith.

GUNSMITH
Discards stocks, sights and trigger guards which leaves only barrel and action.
Adds custom-made stock.
Cuts down barrel.
Blues and polishes bolt.
Replaces sights and trigger guards
Adds telescopic sights on some firearms

CUSTOMER
Purchases modified firearm.

Gunsmith is held to be the manufacturer since the production of the above described custom-type firearms resulted in a new and different article from the original used military-type firearms.

(Based on IRS Revenue Ruling 64-202)

SCENARIO #3

X
Sells barrel and action to customer.

CUSTOMER
Supplies barrel and action.

A
Adds parts to barrel and action and assembles a complete firearm for a fee.

CUSTOMER
Receives complete firearm for personal use.

A is not liable for FAET since A has not sold a firearm to customer. Customer is the manufacturer but not liable for FAET since it is for personal use.

(Based on Internal Revenue Service Ruling 58-586 and Title 27, Code of Federal Regulations, Section 53.112(b)).

SCENARIO #4

SITUATION #1

MANUFACTURER
Sells complete firearm to A.

A
Installs telescopic sight on firearm.

CUSTOMER
Purchases firearm with sight installed from A.

Manufacturer is liable for FAET on sale of complete firearm. A is not liable for FAET since A has not performed an act of further manufacture.

(Based on Internal Revenue Service Ruling 58-586.)

Situation #2

X
Sells used firearm to A.

A
Cleans, blues and repairs sight and stock.

CUSTOMER
Purchases improved firearm.

A is not liable for FAET since A has not performed an act of further manufacture.

(Based on Internal Revenue Service Ruling 58-586)



INFORMATION SHEET

50 GUN EXEMPTION TO THE FIREARMS AND AMMUNITION EXCISE TAX (FAET)

AMENDMENT TO THE PROVISIONS OF 26 U.S.C. 4182

To: Manufacturers, producers and importers of firearms

What is the purpose of this information sheet?

This information sheet announces the amendment to Section 4182 of the Internal Revenue Code of 1986 (IRC), Title 26 United States Code, (U.S.C.), Section 4182, to provide an exemption from the firearms and ammunition excise tax (FAET) for any pistol, revolver, or firearm (article) if it was manufactured, produced, or imported by a person who manufacturers, produces, or imports less than an aggregate of 50 of such articles during a calendar year.

What is the authority for this FAET exemption?

Section 4181 of the IRC (26 U.S.C. 4181) imposes an excise tax on the sale or taxable use of firearms, shells and cartridges by a manufacturer, producer, or importer of these articles. Section 4182 of the IRC provides for certain exemptions from this tax. Prior to October 1, 2005, only sales to the Department of Defense and Coast Guard (where the purchase is made with funds appropriated for the military department) and transactions where the National Firearms Act Transfer Tax (26 U.S.C. 5811) has been paid were exempt from the tax.

The President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59, 119 Stat. 1144). This act amends section 4182 of the IRC by adding a provision that exempts from the tax any pistol, revolver, or firearm if it was manufactured, produced, or imported by a person who manufactures, produces, or imports less than an aggregate of 50 of such articles during the calendar year.

Who qualifies for this exemption?

Whether a manufacturer, importer, or producer qualifies for this exemption is determined by the number of firearms manufactured, produced and imported on a calendar year basis (January 1 – December 31).

For example, if “Company A” manufactures 20 firearms in a calendar year, no FAET is due upon the sale or taxable use of those 20 firearms. However, if “Company A” manufactures 55 firearms in a calendar year, then FAET is due upon the sale or taxable use of any of those 55 firearms.

The amendment also provides that all persons who are a part of a controlled group under 26 U.S.C. 1563 will be treated as one taxpayer for purposes of this exemption.

It should be noted that this amendment does not apply to shells and cartridges.

When is this change effective?

The new exemption went into effect on October 1, 2005. Since FAET is paid quarterly, this corresponded to the beginning of the new tax quarter (October 1 through December 31, 2005).

Further, this exemption has prospective application in that it has no effect on the tax liability of a manufacturer, producer, or importer prior to October 1, 2005.

If I manufacture, produce, or import 50 or more firearms during the calendar year, would I be liable for FAET on the first 49 firearms, as well as all subsequent firearms manufactured, produced, or imported for the remainder of the calendar year (even though I did not collect or pay the tax to the Alcohol and Tobacco Tax and Trade Bureau (TTB))?

Yes, you would owe TTB the FAET on the first 49 firearms that you sold or put to a taxable use whether or not you collected the tax from your customers upon the sale or taxable use of these firearms. This is due to the fact that the exemption applies only if you manufacture, produce, or import less than an aggregate of 50 firearms during the calendar year.

Consequently, you would owe FAET on the first 49 firearms sold or put to a taxable use, as well as on all subsequent firearms manufactured, produced, or imported for the remainder of the calendar year, regardless of when they are sold or put to a taxable use. Each calendar year stands alone for purposes of applying the 50 firearms exemption rule.

If I manufacture, produce, or import less than 50 firearms during the calendar year, would I be liable for FAET on those firearms if I sold them in another calendar year?

No, you would not owe FAET on less than 50 firearms manufactured, produced, or imported during a calendar year regardless of when you sell them.

For example, say “Company B” manufactures 20 firearms in calendar year 2006 but does not sell any of them in calendar year 2006. “Company B” 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 B” would not owe tax on the 60 firearms sold in 2007 since “Company B” only manufactured 20 of those firearms in calendar year 2006 and the other 40 in calendar year 2007. Once again, each calendar year stands alone.

Exemptions at a glance.

Exemptions from Federal Firearms and Ammunition Excise Taxes (FAET)		
Type of Exemption	26 U.S.C. 4182 <i>(Before October 1, 2005)</i>	26 U.S.C. 4182 <i>(After October 1, 2005)</i>
26 U.S.C. 4182(a) Transactions where the National Firearms Act (NFA) Transfer Tax has been paid.	Are exempt from FAET	Are exempt from FAET
26 U.S.C. 4182(b) Firearms, shells and cartridges sold to the Department of Defense and Coast Guard (purchased with funds appropriated for the military department).	Are exempt from FAET	Are exempt from FAET

<p>26 U.S.C. 4182(c)</p> <p>Any pistol, revolver, or firearm (but not shells or cartridges) if it was manufactured, produced, or imported by a person who manufactures, produces, or imports less than an aggregate of 50 of such articles during the calendar year.</p>	<p>Is NOT exempt from FAET</p>	<p>Is exempt from FAET</p>
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Whom do I contact if I have questions about this exemption?

If you have any questions regarding FAET exemptions, please contact:

Alcohol and Tobacco Tax and Trade Bureau
National Revenue Center
Firearms and Ammunition Excise Tax (FAET) Group
8002 Federal Office Building
550 Main Street
Cincinnati, OH 45202-5215

Toll-free telephone number: 1-877-882-3277

Direct telephone number: (513) 684-3817

FAET Group Fax Number: (202)-453-2990

E-mail: ttbfaet@ttb.gov