



October 4, 2012

## **CIGARETTE-MAKING MACHINES AND OTHER TOBACCO PRODUCT MACHINES MADE AVAILABLE FOR USE BY CONSUMERS**

This guidance applies to any person who makes available for consumer use machines capable of making tobacco products, including cigarettes.

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (also known as "MAP-21" or the "Highway Bill"). Under section 100122 of MAP-21, any person who for commercial purposes makes available, for consumer use (including the consumer's personal consumption or use), a machine capable of making tobacco products is considered a "manufacturer of tobacco products" for purposes of the Internal Revenue Code of 1986 (IRC)<sup>1</sup>. In other words, the person who makes the machine available for consumer use is the person liable for the Federal excise tax on the resulting tobacco products. For purposes of the IRC, "tobacco products" include cigars, cigarettes, smokeless tobacco (snuff and chewing tobacco), pipe tobacco, and roll-your-own tobacco. A common business model affected by the MAP-21 amendment to the IRC is the retailer who makes cigarette-making machines available for the use of its customers.

With regard to retailers who sell such machines to consumers, MAP-21 also provides that a person who sells such a machine directly to a consumer at retail for a consumer's personal home use is not making the machine available for commercial purposes if: (1) the machine is not used at a retail premises and (2) the machine is designed to produce tobacco products only in personal use quantities. As a result, in such cases, the retailer would not be considered a "manufacturer of tobacco products" for purposes of the IRC. Additionally, a person who manufactures the machines or distributes the machines to retailers would not be considered to be a "manufacturer of tobacco products" solely based on that manufacturing or distribution activity. TTB intends to provide additional guidance regarding the selling of such machines, and the meaning of the term "personal use quantities" in relation to the sales of machines, as the need arises.

The statutory and regulatory requirements for manufacturers of tobacco products include, but are not limited to:

- Filing returns and paying the applicable taxes;
- Paying special (occupational) tax;
- Obtaining a permit before engaging in business;
- Obtaining a bond; and
- Complying with recordkeeping, reporting, and inventory requirements.

## Federal excise taxes

**Federal excise tax (FET) is due immediately on any tobacco products produced on or after July 7, 2012.** To pay the tax, the manufacturer must file [TTB F 5000.24](#) along with payment of all taxes due.

The FET on cigarettes is \$50.33 per 1,000 cigarettes, which is \$10.066 per 200 (the typical number of cigarettes in a carton). The tax rates of all tobacco products and any guidance on the classification of those products appear in the TTB regulations at [27 CFR part 40, subpart C](#).

Once a manufacturer of tobacco products obtains a permit to operate, the manufacturer files tax returns and pays FET on a semi-monthly schedule. (Under a special rule, September has three return periods, resulting in a total of 25 returns due each year.) The due dates for the tax returns and the tax payments are available on the TTB website at [http://www.ttb.gov/tax\\_audit/fed\\_ex\\_tax\\_due.shtml](http://www.ttb.gov/tax_audit/fed_ex_tax_due.shtml). The TTB regulations regarding these provisions are at [27 CFR part 40, subpart H](#).

## Special (occupational) tax

Manufacturers also are subject to a special (occupational) tax of \$1,000 per year, for each place that such business is carried on. There is a reduced rate of \$500 per year, per place, for small proprietors. Small proprietors are those whose gross receipts for all operations under the permit are less than \$500,000. The regulations regarding the special (occupational) tax are at [27 CFR part 40, subpart Ca](#). **The special (occupational) tax is due immediately from every person engaged in business as a manufacturer of tobacco products on or after July 7, 2012.**

## The TTB permit

It is against the law to operate as a manufacturer of tobacco products without a TTB permit. Anyone operating without a permit risks civil and/or criminal liability. Anyone operating without a permit must immediately cease operations until a TTB permit is obtained.

Those who wish to apply for a permit may do so by submitting an application electronically, using TTB's [Permits Online](#) system. Questions about permit applications may be directed to TTB's National Revenue Center at 1-877-882-3277. The TTB regulations regarding the qualification requirements for manufacturers of tobacco products are at [27 CFR part 40, subpart E](#).

TTB recognizes that the delay in enforcing the MAP-21 provisions (as explained in greater detail below) prevented businesses from obtaining a tobacco product manufacturer's permit from TTB and from receiving guidance regarding operations. TTB will take this into consideration when reviewing any permit applications it receives from affected businesses.

## Bond

A manufacturer of tobacco products must maintain bond coverage. The minimum amount for an individual bond is \$1,000 and the maximum amount is \$250,000. Otherwise, in general, the amount of an individual bond cannot be less than the total amount of tax liability on all tobacco products manufactured, received in bond from other factories and from export warehouses, and released to you in bond from customs custody, during any calendar month.

For manufacturers of tobacco products, the pertinent TTB regulations regarding bonds are at:

- [27 CFR 40.133, Amount of individual bond](#)
- [27 CFR 40.134, Amount of blanket bond](#)

With regard to cigarette-making machines made available to consumers, once a person has obtained a bond and has been issued a TTB permit to operate as a manufacturer of tobacco products, that person may obtain tobacco and cigarette papers or tubes without payment of tax for use in making cigarettes with the cigarette-making machines.

#### Recordkeeping, reporting, and inventory requirements

Once a manufacturer of tobacco products begins operations under its permit, the manufacturer must keep records of its operations and transactions, including detailed records of the receipt and use of tobacco and processed tobacco and of the manufacture and removal of tobacco products. Those records generally must be retained for three years and must be made available for inspection by TTB. The TTB regulations regarding recordkeeping are at [27 CFR part 40, sections 40.181 through 40.187](#).

In addition, every manufacturer of tobacco products must submit to TTB a monthly report during each month that the manufacturer is engaged in such business. That report is [TTB F 5210.5](#), and the regulations regarding that report are at [27 CFR 40.202](#).

Before commencing operations, a manufacturer of tobacco products must make a true and accurate inventory on [TTB F 5210.9](#). Inventories are required at other times as well, such as at the time of a transfer of ownership of the business. Regulations regarding inventories for manufacturers are at [27 CFR 40.201](#).

Under the IRC, TTB has a right to enter any place where tobacco products subject to tax are made, produced, or kept, and there is a penalty for refusal of entry or examination. See [26 U.S.C. 7606](#) and [7342](#).

#### Effective Date and Applicability

The MAP-21 provisions described here became **effective July 7, 2012**. TTB refrained from taking immediate enforcement action under MAP-21 based on concerns relating to an injunction issued by a Federal court prior to enactment of MAP-21. Those concerns no longer exist and had no effect on the applicability of MAP-21, the accrual of tax liability, or the applicability of other IRC requirements that arose once the MAP-21 provisions became effective.

The tax liability and IRC obligations apply to **any** person who for commercial purposes makes the machine available for use by consumers of the tobacco products, regardless of whether the machine is used at a retail premises. Non-profit status of the “person” making the machine available is not relevant in evaluating “commercial purposes.” TTB is aware that “non-profit” organizations, “social clubs,” “cooperatives,” and other similar organizations are being established to make such machines available to members.

TTB is reviewing a number of scenarios in which the machines are being, or have been, made available to consumers and will address specific scenarios on a case-by-case basis. Based on TTB’s current understanding of these scenarios and the applicable law, it is extremely unlikely that TTB will conclude that these organizations are exempt from excise tax liability and

associated IRC obligations. In addition, in general, a person who leases or rents a machine to consumers is not relieved of his or her tax liability and other IRC obligations.

### Questions

Questions regarding applications for a permit, submitting tax returns, calculating the tax, paying special (occupational) tax, obtaining a bond, and complying with recordkeeping, reporting, and inventory requirements may be directed to the National Revenue Center at 1-877-882-3277. [FAQs](http://www.ttb.gov/faqs/tobacco_ryo_machine.shtml) specific to cigarette-making machines made available for consumer use, including questions about the permit process and the bond required, are available on the TTB Web site at [http://www.ttb.gov/faqs/tobacco\\_ryo\\_machine.shtml](http://www.ttb.gov/faqs/tobacco_ryo_machine.shtml).

Any questions concerning the statements made in this circular may be directed to the Regulations and Rulings Division at 202-453-2265 or at [Regulations@ttb.gov](mailto:Regulations@ttb.gov).

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<sup>i</sup> The IRC provision amended by MAP-21 is 26 U.S.C. 5702(d), which now reads as follows:

"Manufacturer of tobacco products" means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, except that such term shall not include -

- (1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and
- (2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Such term shall include any person who for commercial purposes makes available for consumer use (including such consumer's personal consumption or use under paragraph (1)) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal as defined by subsection (j) with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.