



Firearms and Ammunition Excise Tax Overview

NATIONAL SHOOTING SPORTS FOUNDATION

2023 NSSF SHOT SHOW



TTB Disclaimer

This information is being presented to help the public to understand and comply with the laws and regulations that the Alcohol and Tobacco Tax and Trade Bureau (TTB) administers.

It is not intended to establish any new, or change any existing definitions, interpretations, standards, or procedures regarding those laws and regulations.

In addition, this presentation may be made obsolete by changes in laws and regulations.

Please consult the applicable laws and regulations for the most current requirements.

FAET Return Walkthrough

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Agenda

- Filing the FAET Return and Paying Tax
- FAET Return Details (line-by-line walkthrough)



Return Filing and Tax Payment

- Pay.gov
- Paper Filing
- Return and Payment Due Dates



Pay.gov

- TTB recommends using Pay.gov to file returns and pay taxes. Learn more at

<https://www.ttb.gov/what-we-do/online-services/pay-gov>

- **Important Point:** Pay.gov uses ACH for electronic fund transfers. The payment must be completed no later than 4 pm ET one business day prior to the due date.





Paper Filing

- The paper version of the tax return, TTB F 5300.26, is available at <https://www.ttb.gov/images/pdfs/forms/f530026.pdf>
- The latest version of the tax return must be used. The version dated 06/2017 was released in February 2019.
- EFT payments to go along with paper filing may be made outside of Pay.gov. Advance notice is required and there is a minimum four quarter commitment. See <https://www.ttb.gov/tax-audit/tax-payments-by-eft> for details on how the payments are made.



Return and Payment Due Dates

- **Quarterly returns** (the most common type) must be filed by the last day of the month following the end of the quarter. See 27 CFR 53.153 for details.
- **Example:** return due 7/31/2020 for quarter ending 6/30/2020
- Adjustments are made if the due date falls on a Saturday, Sunday, or legal holiday. TTB posts a schedule each year that accounts for this (e.g. <https://www.ttb.gov/tax-audit/2020-firearms-due-dates>)



FAET Return Details

- **Part I – General**
- **Part II – Calculation of Taxes on Sales or Uses During This Tax Period**
- **Part III – Calculation of Tax Liability for this Tax Period**
- **Schedule A – Increasing Adjustments**
- **Schedule B – Decreasing Adjustments**
- **Certification**

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FAET Return Part II – Calculation of Taxes

PART II – CALCULATION OF TAXES ON SALES OR USES DURING THIS TAX PERIOD <i>(Please refer to the appropriate instructions before completing Items 8 – 22)</i>			
Taxes Calculated for This Tax Period	Taxable Articles		
	Handguns <i>(Pistols and Revolvers)</i> (a)	Other Firearms <i>(Rifles, Shotguns, Machine Guns, etc.)</i> (b)	Ammunition <i>(Shells and Cartridges)</i> (c)
8. The sales price of all articles sold and/or put to a business use	\$	\$	\$
9. The sales price of all articles sold tax-exempt			
10. The sales price of all articles sold tax-free			
TTB Tax-free Registration Number:			
11. Taxable sales and uses <i>(Item 8 minus Item 9 and Item 10)</i>			
12. Eligible adjustments - included excise tax			
13. Eligible adjustments - non-taxable articles			
14. Eligible adjustments - other			
15. Adjusted taxable sales and uses <i>(Item 11 minus Items 12, 13 and 14)</i>			
Tax Rate	10%	11%	11%
16. Total tax <i>(Multiply Item 15 by the Tax Rate above)</i>	\$	\$	\$



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Because of the importance of this line, we will go through each instruction one-by-one.

Combining sales and business uses on the same line is an important change on the latest form version.

Instruction 1: “Include FAET if it is included in the sales price.”

If there is a separate invoice line for FAET, care must be taken to ensure it is not overstated. Knowingly telling customers more tax is due than what will be paid to TTB is a misdemeanor under 26 U.S.C. 7211, False statements to purchasers or lessees relating to tax.



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Instruction 2: “Enter the dollar amount of your total sales of taxable articles, including tax-exempt or tax-free sales during the tax period stated in Item 7.”

One thing to think about here: used guns. Domestic used firearms are nontaxable articles that should be excluded from line 8. Imported used firearms, however, are often taxable. A good source for more information is

https://www.ttb.gov/images/pdfs/faet_imp_ortation_information.pdf





Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Instruction 3: “Do not include articles if you are not the manufacturer, producer, or importer for purposes of this tax.”

One situation this addresses is nominal importers.

- If someone else is driving the transaction and causing the importation to occur, the importer of record might be just a nominal importer not liable for FAET.
- In such a case, the person causing the importation may be viewed as a beneficial owner liable for the tax.
- For more details, see 27 CFR 53.11, Revenue Rulings 69-393 and 72-215, and <https://www.ttb.gov/firearms/importers>.



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Instruction 4: “Except for leases and certain installment sales, you must include all sales regardless of whether your customers paid you.”

Instruction 5: “The sales price is usually stated on the customer’s invoices. You should also include the dollar value of things other than money given as consideration for the article. This includes services, personal property, and articles traded in.”



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Instruction 6: “Do not include the sales price of a non-taxable article unless you sold it as a unit with the taxable article.”

Sold it as a unit means for a single, combined price. If sold separately on the same invoice, exclude the nontaxable article from line 8. Examples of nontaxable parts and accessories per 27 CFR 53.61 include:

-Cleaning Equipment -Extra magazines -Gun Case



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use



Instruction 7: “When a taxable article is sold as a unit with a non-taxable article (for example, a pistol and holster) or with extra parts or accessories, you should enter the sale price of the unit. If a taxable sale, you may adjust the unit’s sales price in Item 13 to exclude the non-taxable article, part, or accessory.”



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Instruction 8: “You must pay the tax on your business use of taxable articles that you manufactured or imported. If you regularly sell the articles, you must compute the tax based on the lowest established wholesale price.”



Common Use – Loans to Writers



Line 8 – The Sales Price of All Articles Sold and/or Put to a Business Use

Instruction 9: “Include the sum of the prices for articles used. Uses Include: loans of articles for display, demonstration or familiarization, or further manufacture of an article not subject to any FAET. (Please refer to 27 CFR 53.111 – 115 for more information.)”



Line 9 – The Sales Price of All Articles Sold Tax-exempt

Sales to the Federal Government, its Agencies, and Instrumentalities

- Do not assume that a sale to the federal government, its agencies, or instrumentalities will be tax-exempt.
- Refer to the statutes (next slide) to see which government entities are tax-exempt.
- A specific exemption must exist for the specific buyer.



Line 9 – The Sales Price of All Articles Sold Tax-exempt

Tax-exempt sales fall into the following categories (see, in general, 27 CFR 53.62):

- Firearms on which the National Firearms Act (NFA) transfer tax has been paid (26 U.S.C. 4182(a))
- Sales by small manufacturers, producers, and importers (26 U.S.C. 4182(c))
- Sales to the Defense Department (26 U.S.C. 4182(b))
- Sales to the Coast Guard (14 U.S.C. 943)
- Sales to the Federal Reserve (12 U.S.C. 531)



Line 9 – The Sales Price of All Articles Sold Tax-exempt

4 important caveats to tax-exempt sales

1 NFA Firearms – Sales are only tax-exempt if the \$200 or \$5 transfer tax has been paid.

The NFA transfer tax exemption statutes do not eliminate the excise tax liability. If the NFA transfer tax is not paid, then the excise tax will apply unless another excise tax exemption or tax-free situation applies to the transaction. For example, NFA weapons were exported or sold to a local police department.



Line 9 – The Sales Price of All Articles Sold Tax-exempt

4 important caveats to tax-exempt sales

2 Defense Department – Sales are only tax-exempt if “purchased with funds appropriated for a military department of the United States.” Meaning: Departments of the Army, Air Force, and Navy (which includes Marine Corps). Examples of what is NOT included:

- Pentagon Police Department (funded at the DOD level)
- Foreign Military Sales (usually tax-free, though, with proper docs)



Line 9 – The Sales Price of All Articles Sold Tax-exempt

4 important caveats to tax-exempt sales

- 3 Direct Sale** – In general, sales must be made directly to the tax-exempt entity. Sales contracts assist in establishing direct sales.



Line 9 – The Sales Price of All Articles Sold Tax-exempt

4 important caveats to tax-exempt sales

- 4** **Small manufacturer** – Sales are tax-exempt if the manufacturer/importer manufactures/imports less than 50 firearms in a calendar year, regardless of when sold. So...
- If a **manufacturer** in Year 1 makes 20 firearms but sells 0, then in Year 2 makes 40 firearms and sells all 60, FAET is due on none of them.
 - If a **manufacturer** in Year 1 makes 50 firearms, sells 25 in Year 1 and 25 in Year 2, FAET is due on all 50. BEWARE: That 50th gun is expensive!
 - Tracking serial numbers is crucial to qualify for this exemption.
 - Ammunition is not subject to this exemption, even 1 bullet sold in a year would require filing a FAET return and excise tax being paid!



Line 10 – The Sales Price of All Articles Sold Tax-free

5 Types of Tax-Free Sales

State or Local Government



Export



Line 10 – The Sales Price of All Articles Sold Tax-free

5 Types of Tax-Free Sales



Supplies for
Vessels or Aircraft

Nonprofit
Educational
Institution



Further
Manufacture



Line 10 – The Sales Price of All Articles Sold Tax-free

Registration Required

The requirement for the manufacturer/importer to enter their tax-free registration number on the FAET return is a blunt reminder that a registration is generally required.

There are only **2 exceptions** to the requirement that the manufacturer/importer be registered:

1. If the seller happens to be part of the U.S. government (let's assume you aren't)
2. If the tax-free purpose is for supplies for vessels and aircraft



Line 10 – The Sales Price of All Articles Sold Tax-free

Customer Registration Requirement Exceptions

The tax-free customer must be registered as well unless one of **4 exceptions** applies under 27 CFR 53.141.

- 1 State or Local Government** – In the absence of a registration, the state or local government must provide a properly executed exemption certificate or a purchase order containing the same information.
- 2 Sales or resales to foreign purchasers for export** – “Persons whose principal place of business is not within the United States may, but are not required to, register in order to purchase articles tax free for export.” See 27 CFR 53.141(b) for more information.



Line 10 – The Sales Price of All Articles Sold Tax-free

Customer Registration Requirement Exceptions

3 United States – The Federal Government as a whole does not enjoy tax-free status (although certain parts are tax-exempt). This covers limited circumstances where a federal agency that is not tax-exempt purchases firearms for a tax-free purpose. For example, the Drug Enforcement Administration wants to purchase guns for export to Colombia. The DEA does not need a tax-free registration.

4 Supplies for vessels and aircraft – Registration not required if the requirements of 27 CFR 53.134(d)(2) are satisfied.



Line 10 – The Sales Price of All Articles Sold Tax-free

Post-Export Documentation Requirement

Per 27 CFR 53.133(d)(1), “Exportation may be evidenced by:

- (i) A copy of the export bill of lading issued by the delivering carrier,
- (ii) A certificate by the agent or representative of the export carrier showing actual exportation of the article,
- (iii) A certificate of landing signed by a customs officer of the foreign country to which the article is exported,



Line 10 – The Sales Price of All Articles Sold Tax-free

Post-Export Documentation Requirement (continued)

(iv) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article, or

(v) Where a department or agency of the United States Government is unable to furnish any one of the foregoing four types of proof of exportation, a statement or certification on the department or agency stationery, executed by an authorized officer, that the listed or identified articles have, in fact, been exported.”



Line 10 – The Sales Price of All Articles Sold Tax-free

Post-Export Documentation Requirement

- (i) Date statement was executed.
- (ii) Name and address of manufacturer's vendee (if other than the person executing statement).
- (iii) Certificate of registry number held by vendee.
- (iv) Specify article(s) purchased tax-free, by whom purchased, and date of purchase.
- (v) Statement that article(s) was either exported in due course by the vendee or was sold to another person who in due course exported the article(s).



Line 10 – The Sales Price of All Articles Sold Tax-free

Post-Export Documentation Requirement

(vi) Name and address of vendee who will maintain possession of the proof of exportation documents, description of the documents, and statement that vendee will maintain documents for 3 years and make them available to TTB for inspection.

(vii) Statement that a previous statement has not been executed in respect of the articles covered by this statement and that fraudulent use of this statement may subject person executing statement and all parties making fraudulent use of statement to all applicable criminal penalties under the Code.

(viii) Name, signature, title, and address of individual executing certificate.”



Line 10 – The Sales Price of All Articles Sold Tax-free

Post-Export Documentation Requirement

27 CFR 53.133(d)(3) states, “The statement executed and signed by the manufacturer's vendee, as provided in paragraph (d)(2) of this section, may be executed with respect to any one or more articles purchased tax free from a manufacturer and exported within the 6-month period prescribed in section 4221(b)(2) of the Code and paragraph (c) of this section.

Such statement shall be kept for inspection by the appropriate TTB officer as provided in section 6001 of the Code.”

OMB No. 1513-0128 (07/31/2017)

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

STATEMENT OF MANUFACTURER'S VENDEE (FOR EXPORTS)
(To support tax-free sales of taxable articles to a purchaser for export or for resale to a second purchaser for export (section 4221(a)(2) of the Internal Revenue Code).)

The undersigned, or the _____ of which
(Name of manufacturer's vendee if other than undersigned)
I am _____ holds certificate of registry No. _____,
(Title)
issued by the TTB Director, National Revenue Center at _____
(city and state)

The article or articles specified below or on the reverse side hereof were purchased tax-free by me or by
_____ on _____
(Name of manufacturer's vendee if other than undersigned) (Date)
and were thereafter exported.

The undersigned or _____ has in my/its
(Name of manufacturer's vendee if other than undersigned)
possession proof of exportation in respect of such article or articles. The evidence of export available is
_____ and is located at _____
(State type of proof of exportation) (if other than address below)

Such proof of exportation will be retained by _____ for at
(Name of manufacturer's vendee)
least 3 years from the date of this statement and will be made readily available for inspection by TTB officers.

I have not previously executed a statement in respect of the article or articles covered by this statement, and I understand that the fraudulent use of this statement will subject me and all parties making such fraudulent use of this statement to all applicable criminal penalties under the Internal Revenue Code.

SIGNATURE	PRINTED NAME	DATE
ADDRESS		

PAPERWORK REDUCTION ACT NOTICE

This request is in accordance with the Paperwork Reduction Act of 1995. In some cases, persons who sell firearms or ammunition tax-free use specific statements to support the tax-free sales. In addition, a specific statement from the ultimate vendor to support claims for certain tax refunds or credits is required. This form contains all required information for a properly executed statement. This is being provided to promote uniformity among excise taxpayers and eliminate the need for taxpayers to design their own statements. The information requested is required by Title 27, Code of Federal Regulations, Part 53.

We estimate the average burden associated with this collection of information is 45 minutes per respondent or recordkeeper, depending on your individual circumstances. Address your comments concerning the accuracy of this burden estimate and suggestions to reduce this burden to: Reports Management Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005

TTB may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a current, valid OMB control number.

TTB F 6800-98 (10/2008)



Line 11 – Taxable Sales and Uses

A simple calculation:

Start: Line 8: The sales price of all articles sold and/or put to a business use

Subtract: Line 9: The sales price of all articles sold tax-exempt

Subtract: Line 10: The sales price of all articles sold tax-free

Equals: Line 11: Taxable sales and uses



Line 12 – Eligible Adjustments – Included Excise Tax

- Line 12 is for the portion of line 8 that was included excise tax.
- If tax-excluded invoicing was used and no tax was included on line 8, this line should be zero.
- If tax-included invoicing was used for all sales, this line should, in general, equal line 16.
- If a mix of tax-included and tax-excluded pricing was used, there is no direct tie between line 12 and line 16.



Line 13 – Eligible Adjustments – Non-taxable Articles

The written instructions provide the best guidance for this line:

“In this Item you may exclude or deduct the following non-taxable articles when included in the sales price of a taxable article and not as a separate charge:

- Extra and identical parts and accessories.
- Non-taxable articles when sold in combination with a taxable article.”



Line 13 – Eligible Adjustments – Non-taxable Articles

Determining the Exclusion Amount

The regulations, in 27 CFR 53.91(e), envision **2 scenarios**:

1. Where separate sales prices exist for the taxable and nontaxable articles, a relative sales price method can be used.
2. Where the manufacturer/importer does not sell the taxable and nontaxable articles separately, a relative cost method may be used.

In practice, the relative cost method is more common, in part due to exclusions of nontaxable accessories such as gun locks.

Since a sales price usually doesn't exist for the firearms without the gun locks, the relative cost method may be used. However, actual costing data would be necessary to support this nontaxable article exclusion.



Line 13 – Eligible Adjustments – Non-taxable Articles

Example – Relative Sales Method

Pistol sold with holster (tax included):	\$200
Established sale price for just the pistol (tax excluded):	\$180
Established sale price for just the holster:	\$15

Revenue Ruling 69-394 provides detailed guidance on how to determine the tax and line 13 adjustment.

The next 2 slides follow that guidance but in a manner designed to be easier to understand.



Line 13 – Eligible Adjustments – Non-taxable Articles

Step 1: Determine the taxable ratio as follows:

$$\frac{\text{Taxable Article Separate Sale Price (Tax Excluded)}}{\text{Taxable Article Separate Sale Price (Tax Excluded)} + \text{Nontaxable Article Separate Sale Price}} = \frac{\$180}{\$180 + \$15} = 0.923$$

Step 2: Determine the tax excluded sale price of the combination as follows:

$$\frac{\text{Tax Included Sale Price of the Combination}}{1 + (\text{tax rate})(\text{step 1 taxable ratio})} = \frac{\$200}{1 + (0.10)(0.923)} = \$183.10$$



Line 13 – Eligible Adjustments – Non-taxable Articles

Step 3: Determine line 12 tax amount as follows

$$\begin{array}{rcl} \text{Combination Sales} & - & \text{Step 2 Combination Sales} \\ \text{Price (Tax Included)} & & \text{Price (Tax Excluded)} \end{array} = \$200 - \$183.10 = \$16.90$$

Step 4: Determine the line 13 eligible adjustment as follows

$$\begin{array}{rcl} \text{Step 2 Combination} & & \text{Nontaxable} \\ \text{Sales Price} & \times & \text{Ratio} \\ \text{(Tax Excluded)} & & \end{array} = \$183.10 \times 0.077 = \$14.10$$



Line 13 – Eligible Adjustments – Non-taxable Articles

Summary – Relative Sales Method Example

Line 8: The sales price of all articles sold...	\$200.00
Line 12: Eligible adjustments – included excise tax	\$ 16.90
Line 13: Eligible adjustments – non-taxable articles	\$ 14.10
Line 15: Adjusted taxable sales and uses	\$169.00

Check: Is the tax we calculated (\$16.90) equal to the adjusted taxable sale price (\$169.00) times the tax rate (10%)? YES!



Line 13 – Eligible Adjustments – Non-taxable Articles

Example – Relative Cost Method

Pistol sold with 25th anniversary belt buckle (tax incl.):	\$200
Established sale price for just the pistol:	\$195
Established sale price for just the belt buckle:	None
Cost of the pistol:	\$100
Cost of a belt buckle:	\$3

The relative sales method can't be used (the commemorative belt buckle isn't sold separately). The relative cost method must be used.



Line 13 – Eligible Adjustments – Non-taxable Articles

Step 1: Determine the taxable ratio as follows

$$\frac{\text{Taxable Article Cost}}{\text{Taxable Article Cost} + \text{Nontaxable Article Cost}} = \frac{\$100}{\$100 + \$3} = 0.971$$

Step 2: Determine the tax excluded sale price of the combination as follows

$$\frac{\text{Tax Included Sale Price of the Combination}}{1 + (\text{tax rate})(\text{step 1 taxable ratio})} = \frac{\$200}{1 + (0.10)(0.971)} = \$182.30$$



Line 13 – Eligible Adjustments – Non-taxable Articles

Step 3: Determine line 12 tax amount as follows

$$\begin{array}{rcl} \text{Combination Sales} & - & \text{Step 2 Combination Sales} \\ \text{Price (Tax Included)} & & \text{Price (Tax Excluded)} \end{array} = \$200 - \$182.30 = \$17.70$$

Step 4: Determine the line 13 eligible adjustment as follows

Note: If the taxable ratio in step 1 is 0.971 or 97.1%, the corresponding nontaxable ratio is 0.029, or 2.9%.

$$\begin{array}{rcl} \text{Step 2 Combination} & & \text{Nontaxable} \\ \text{Sales Price} & \times & \text{Ratio} \\ \text{(Tax Excluded)} & & \end{array} = \$182.30 \times 0.029 = \$5.29$$



Line 13 – Eligible Adjustments – Non-taxable Articles

Summary – Relative Cost Method Example

Line 8: The sales price of all articles sold...	\$200.00
Line 12: Eligible adjustments – included excise tax	\$ 17.70
Line 13: Eligible adjustments – non-taxable articles	\$ 5.29
Line 15: Adjusted taxable sales and uses	\$177.01

Check: Is the tax we calculated (\$17.70) equal to the adjusted taxable sale price (\$177.01) times the tax rate (10%)? YES!



Line 14 – Eligible Adjustments – Other

These adjustments often decrease the amount of taxable sales but they can increase that amount as well.

Most common:

- Freight expenses incurred in connection with the delivery of an article to the purchaser
- Constructive sales price adjustments

Less common: Not an all-inclusive list – see form instructions for more details

- Cost of credit (when all legal requirements met)
- Local advertising charges (when all legal requirements met)
- Additional charges not included on line 8 (for example, for an optional warranty)



Line 14 – Eligible Adjustments – Other

Freight – Important Points

- The cost of freight must have been included in the price declared on line 8.
- Actual freight expense must be used (no estimating).
- Only the freight on taxable sales may be excluded (no freight exclusion allowed for tax-exempt or tax-free sales).
- If taxable and nontaxable articles are sold as a unit and an exclusion is made on line 13 for the nontaxable articles, freight expense is limited to the portion allocable to the taxable articles.
- The allocation required in the prior bullet must be done, in general, by weight unless you have authorization from TTB to use another method.



Line 14 – Eligible Adjustments – Other

Freight Example 1 of 3

Pistol Sales Price (tax included):	\$100
Invoiced Freight Charge:	\$ 0
Actual Freight Expense:	\$ 10

Line 8: The sales price of all articles sold...	\$100.00
Line 14: Eligible adjustments – other	\$ 10.00
Difference: Adjusted taxable sales price + tax	\$ 90.00
Line 15: Adjusted taxable sales and uses	\$ 81.82
$\$90.00 \div (1 + 10\% \text{ tax rate})$	
Line 16: Total tax	\$ 8.18
$\$81.82 \times 10\% \text{ tax rate}$ – Also goes on line 12	



Line 14 – Eligible Adjustments – Other

Freight Example 2 of 3

Pistol Sales Price (tax included):	\$100
Invoiced Freight Charge:	\$ 15
Actual Freight Expense:	\$ 10

Line 8: The sales price of all articles sold... \$115.00

Line 14: Eligible adjustments – other \$ 10.00

Difference: Adjusted taxable sales price + tax \$105.00

Line 15: Adjusted taxable sales and uses \$ 95.45

$\$105.00 \div (1 + 10\% \text{ tax rate})$

Line 16: Total tax \$ 9.55

$\$95.45 \times 10\% \text{ tax rate}$ – Also goes on line 12



Line 14 – Eligible Adjustments – Other

Freight Example 3 of 3

Pistol + Extra Magazine Sales Price (tax included)	\$150
Invoiced Freight Charge:	\$ 15
Actual Freight Expense:	\$ 10
Sales Price of Pistol Alone (tax excluded):	\$140
Sales Price of Magazine Alone:	\$ 8
Total Weight of Package:	3.5 lbs.
Weight of Pistol Alone:	3.0 lbs.
Weight of Extra Magazine Alone:	0.5 lbs.



Line 14 – Eligible Adjustments – Other

Step 1: Determine the line 14 exclusion for freight

$$\begin{array}{c} \text{Actual} \\ \text{Freight} \\ \text{Expense} \end{array} \times \frac{\begin{array}{c} \text{Weight of} \\ \text{Taxable} \\ \text{Articles} \end{array}}{\begin{array}{c} \text{Weight of} \\ \text{Taxable} \\ \text{Articles} \end{array} + \begin{array}{c} \text{Weight of} \\ \text{Nontaxable} \\ \text{Articles} \end{array}} = \$10 \times \frac{3.0}{3.0 + 0.5} = \$8.57$$

Step 2: Determine the total consideration received (tax included) less the allowed freight exclusion.

$$\begin{array}{c} \text{Tax Included} \\ \text{Combination Sales} \\ \text{Price} \end{array} + \begin{array}{c} \text{Invoiced} \\ \text{Freight} \end{array} - \begin{array}{c} \text{Allowed} \\ \text{Freight} \\ \text{Exclusion} \end{array} = \$150 + \$15 - \$8.57 = \$156.43$$



Line 14 – Eligible Adjustments – Other

Step 3: Determine the taxable ratio as follows

$$\frac{\text{Taxable Article Separate Sale Price (Tax Excluded)}}{\text{Taxable Article Separate Sale Price (Tax Excluded)} + \text{Nontaxable Article Separate Sale Price}} = \frac{\$140}{\$140 + \$8} = 0.946$$

Step 4: Determine the tax excluded adjusted sale price of the combination as follows

$$\frac{\text{Step 2 Tax Included Total Consideration Less Freight}}{1 + (\text{tax rate})(\text{step 3 taxable ratio})} = \frac{\$156.43}{1 + (0.10)(0.946)} = \$142.91$$



Line 14 – Eligible Adjustments – Other

Step 5: Determine line 12 tax amount as follows

$$\begin{array}{l} \text{Step 2 Tax Included Total} \\ \text{Consideration Less Freight} \end{array} - \begin{array}{l} \text{Step 4 Tax Excluded} \\ \text{Adjusted Sale Price} \end{array} = \$156.43 - \$142.91 = \$13.52$$

Step 6: Determine the line 13 eligible adjustment as follows

Note: If the taxable ratio in step 3 is 0.946 or 94.6%, the corresponding nontaxable ratio is 0.054, or 5.4%.

$$\begin{array}{l} \text{Step 4 Combination} \\ \text{Sales Price} \\ \text{(Tax Excluded)} \end{array} \times \begin{array}{l} \text{Nontaxable} \\ \text{Ratio} \end{array} = \$142.91 \times 0.054 = \$7.72$$



Line 14 – Eligible Adjustments – Other

Summary - Freight Example 3 of 3

Line 8: The sales price of all articles sold... \$165.00

Line 12: Eligible adjustments – included excise tax \$ 13.52

Line 13: Eligible adjustments – non-taxable articles \$ 7.72

Line 14: Eligible adjustments – other \$ 8.57

Line 15: Adjusted taxable sales and uses \$135.19

Check: Is the tax we calculated (\$13.52) equal to the adjusted taxable sale price (\$135.19) times the tax rate (10%)? YES!



Line 14 – Eligible Adjustments – Other

Constructive Sales Price (CSP)

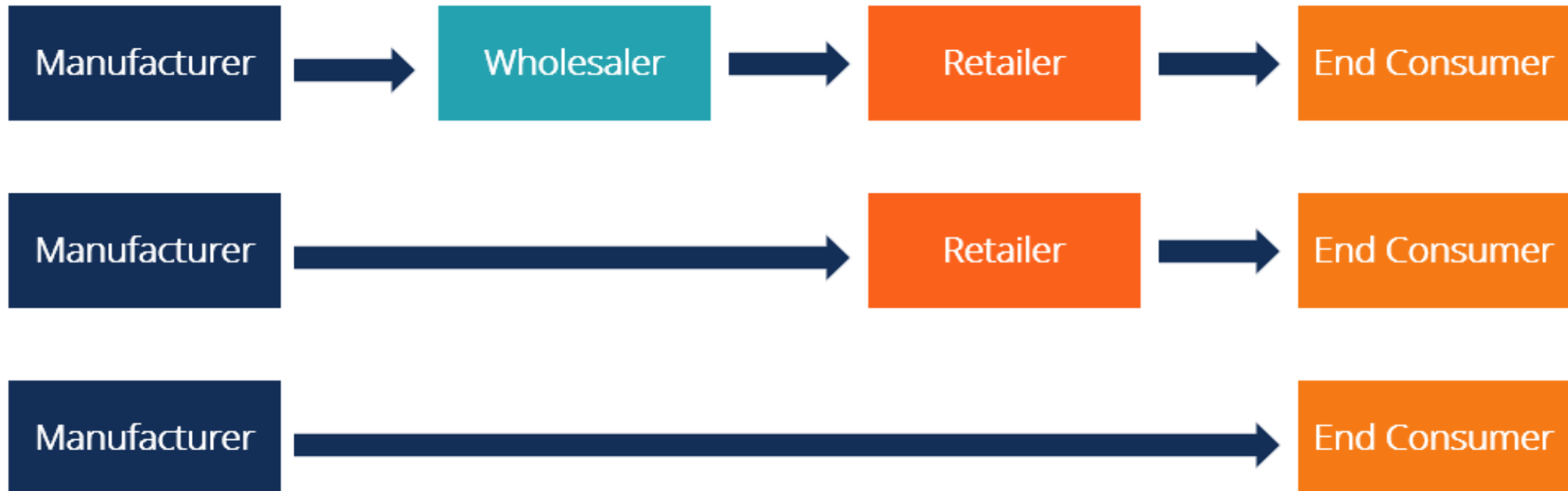
A full discussion of this topic is too complex for an 1-hour presentation. There are **2 general themes** to the CSP rules.

1. FAET is generally designed to be based on a wholesale price. Congress knew sales to retailers or end consumers (aka “at retail”) could occur and would likely have a higher markup than sales of similar articles to wholesalers. The CSP rules are designed so manufacturers/importers are not penalized, in the form of a higher tax liability, by making certain sales to levels further down the distribution chain.
2. FAET is designed to be based on sales at arm’s length and at fair market price. The CSP rules are designed so tax liability is not artificially reduced by selling to a related party or otherwise not at arm’s length and for less than fair market price.



Line 14 – Eligible Adjustments - Other

CSP – Distribution Chain





Line 14 – Eligible Adjustments Other

- The CSP Special Rule is found in 26 U.S.C. 4216(b)(2); applies if:
- Regular sales to retailers/at retail;
- Regular arm's length sales to wholesalers, and;
- Transaction at issue is also arm's length, then:
- The tax basis is the lower of: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesalers



Line 14 – Eligible Adjustments – Other

Simple CSP Example

A manufacturer regularly sells a pistol to:

Wholesalers for either \$200, \$220, or \$240

Directly to end consumers for \$300

Under the applicable CSP rule, tax on the direct sales to end consumers may be based on the \$240 price rather than the \$300 price. See 26 U.S.C. 4216(b)(2) and 27 CFR 53.96.

CSP can be a complicated topic. This example is provided simply to illustrate the basic principle. Taxpayers should carefully research the applicable guidance if their sales are subject to a CSP adjustment.



Line 14 – Eligible Adjustments – Other

Simple CSP Example (continued)

The sale would be reported as follows (assume all prices were tax included):

Line 8: The sales price of all articles sold...	\$300.00
Line 12: Eligible adjustments – Included Excise Tax	\$21.82
Line 14: Eligible adjustments – other	\$60.00
Line 15: Adjusted taxable sales and uses	\$218.18
$\$240 \div (1 + 10\% \text{ tax rate})$	
Line 16: Total tax	\$21.82



Line 15 – Adjusted Taxable Sales And Uses

A simple calculation:

Start: Line 11: Taxable sales and uses

Subtract: Line 12: Eligible adjustments – included excise tax

Subtract: Line 13: Eligible adjustments – non-taxable articles

Subtract: Line 14: Eligible adjustments - other

Equals: Line 15: Adjusted taxable sales and uses



Line 16 – Total Tax

A simple calculation:

Tax Rate	10%	11%	11%
16. Total tax <i>(Multiply Item 15 by the Tax Rate above)</i>	\$	\$	\$

And we are done! That is, we are done calculating the tax liability on current period sales and uses.

Everything in lines 8 through 16 should relate to sales and uses that occurred in the period declared on line 7.



FAET Return Part III – Calculation of Taxes

PART III – CALCULATION OF TAX LIABILITY FOR THIS TAX PERIOD <i>(Before making entries on Items 18 - 22, complete Schedules A and B on page 2 of this form)</i>	
17. Total of Items 16(a) + 16(b) + 16(c)	\$
18. Increasing adjustments from Item 27, Schedule A <i>(Prior quarters adjustments)</i>	
19. Gross tax <i>(Item 17 plus Item 18)</i>	
20. Decreasing adjustments from Item 34, Schedule B <i>(Cannot exceed Item 19) (Prior quarters adjustments)</i>	
21. Net tax due with this return <i>(Item 19 minus Item 20. Cannot be less than zero)</i>	
22. Amount paid with this return	\$

Generally self explanatory. We will not go through each line in depth.

Note, however, lines 18 and 20 are for prior period adjustments. Part II (lines 8 through 16) accounts for current period activity; Part III calculates total tax due and accounts for any necessary adjustments related to sales from a prior period.



Schedule A – Increasing Adjustments

SCHEDULE A — INCREASING ADJUSTMENTS <i>(See instructions)</i>			
Explanation of Increasing Adjustments (a)	Amount of Adjustments		
	Tax (b)	Interest (c)	Penalty (d)
23.	\$	\$	\$
24.			
25.			
26. Totals of Columns (b), (c), and (d)	\$	\$	\$
27. Total of Item 26, Columns (b), (c), and (d)			\$



Schedule A – Increasing Adjustments

Per the written instructions: “Use this Item to report increasing adjustments (Note: These increasing adjustment account for underpayments from prior quarters). Examples include:

- Errors you made in calculating the tax you owed in a previous tax return period which resulted in an underpayment of your tax.
- Penalties and/or interest you owe on increasing adjustments.”



Schedule B – Decreasing Adjustments

SCHEDULE B — DECREASING ADJUSTMENTS <i>(See instructions)</i>		
Explanation: Select an allowable adjustment from the drop-down <i>(Provide details on row below.)</i> (a)	Amount of Adjustments	
	Tax (b)	Interest (c)
28. <input type="text"/>	\$	\$
29. <input type="text"/>		
30. <input type="text"/>		
31. <input type="text"/>		
32. <input type="checkbox"/> Yes <input type="checkbox"/> No Conditions to Allowance: In Compliance with 26 U.S.C. 6416(a)(1), I/We certify that I/we sold the article(s) at a tax-excluded price, repaid the amount of tax to the buyer, or have obtained written consent from the buyer to make this/these claim(s)/adjustment(s). <i>(See Instructions)</i>		
33. Totals of Columns (b) and (c)	\$	\$
34. Total of Item 33, Columns (b) and (c)		\$



Schedule B – Decreasing Adjustments

The instructions are similar to those for Schedule A – Increasing Adjustments. Again, they should relate to overpayments from prior quarters. The 2 given examples are to correct errors on previous returns and claim interest owed.

3 other common types of decreasing adjustments will be discussed on the following slides.

Note: all of these are formal claims for credit (an allowable alternative to filing a separate claim for refund).

- While these claims are easy to file, they still require substantial support to be kept on file and readily available upon request by TTB. For full details, see 27 CFR 53.171 – 53.185 and 27 CFR 70.123.



Schedule B – Decreasing Adjustments

Product Return Example

The pistol sold directly to an end consumer for \$300 in the Simple CSP Example is returned for a full refund.

The pistol had been used and was returned under an express warranty given on all of the manufacturer's sales.

The sale occurred in Q1 2019 and the return is being made in Q2 2019.

A claim for credit for the \$21.82 in tax originally paid may be declared as a decreasing adjustment on the Q2 2019 FAET return.

This is viewed as a **price readjustment** – 2 regulatory sections outline the support needed for a price readjustment claim...



Schedule B – Decreasing Adjustments

- 1** 27 CFR 53.176 – Requires that a claim for credit or refund caused by a price readjustment must be accompanied by a **statement**:
- Describing the circumstances which gave rise to the price readjustment.
 - Identifying the article in respect of which the price readjustment was allowed.
 - Showing the price at which the article was sold, the amount of tax paid in respect of the article, and the date on which the tax was paid.
 - Giving the name and address of the purchaser to whom the article was sold, and
 - Showing the amount repaid to the purchaser or credited to the purchaser's account.



Schedule B – Decreasing Adjustments

- 2 27 CFR 70.123 – Makes clear that a claim must comply with the **statute of limitations** and be executed under **penalties of perjury**. Outlines other conditions related to specific types of claims.



Schedule B – Decreasing Adjustments

Prompt Payment Example

The pistol in freight example 1 of 3 was sold in Q1 2019 for \$100.

\$8.18 in tax was paid on the Q1 2019 return.

Invoice terms included a prompt payment discount of 2% if paid within 60 days.

In Q2 2019, the customer paid \$98 in full payment of the \$100 invoice.

The \$2 discount is seen as containing \$0.18 in tax, calculated as follows:

$10\% \text{ tax rate} \times (\$2 \text{ discount} \div (1 + 10\% \text{ tax rate}))$.

A claim for credit of \$0.18 may be taken as a decreasing adjustment on the Q2 2019 tax return.

As a price readjustment, the required support is the same as was discussed for the product return example.



Schedule B – Decreasing Adjustments

Subsequent Tax-Free Sale Example

The pistol in the 1st freight example is sold taxpaid to a distributor in Q1 2019.

The distributor sold it to a local police department in Q2 2019.

The distributor informs the manufacturer that it sold the firearm to an eligible tax-free customer and the manufacturer reimburses the distributor for the \$8.18 in tax originally paid.

A claim for credit for the \$8.18 in tax originally paid may be declared as a decreasing adjustment on the Q2 2019 FAET return.



Schedule B – Decreasing Adjustments

Condition to Allowance

32.	<input type="checkbox"/> Yes	Conditions to Allowance: In Compliance with 26 U.S.C. 6416(a)(1), I/We certify that I/we sold the article(s) at a tax-excluded price, repaid the amount of tax to the buyer, or have obtained written consent from the buyer to make this/these claim(s)/adjustment(s). <i>(See Instructions)</i>
	<input type="checkbox"/> No	

Per the written instructions, “This ‘Yes’ or ‘No’ checkbox only applies if you are claiming a decreasing adjustment based on one of the first two descriptions from the Schedule B dropdown list; either

1. **No liability exists of FAET paid in error, or**
2. **Exportation, uses and resale of articles (tax-free sales by manufacturer).**



Schedule B – Decreasing Adjustments

Condition to Allowance

- The general purpose of this rule is **tax fairness**.
- In most instances the Internal Revenue Code does not want the manufacturer or importer to benefit from the claim for credit or refund due to the fact that the tax is passed along to the customers in the sale price.
- In other words—those who bore the ultimate burden of the tax (customers) will, in most instances, receive the benefit of the refund.



Certification

CERTIFICATION		
Under penalties of perjury, I declare that I have reported all transactions and tax liabilities required by law and regulations. I have examined this return (including any attached explanations, statements, schedules, and forms) and to the best of my knowledge and belief it is true, complete, and correct. If I took adjustment(s) in Schedule B, I have met all requirements of Title 26, United States Code and the applicable Federal regulations, Title 27, Code of Federal Regulations, Part 53.		
35. Date	36. Signature (Original Signature Only)	37. Print Name and Title

It is the industry member's responsibility to ensure an **authorized person** signs the return.

Per 27 CFR 53.21, "An individual's signature on a return, statement, or other document made by or for a corporation or a partnership shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document."