

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-22011 Filed 8-28-96; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[Notice No. 836]

RIN 1512-AB49

Firearms and Ammunition Excise Taxes, Parts and Accessories

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend regulations in 27 CFR Part 53, relating to the manufacturers excise tax on firearms and ammunition. Pursuant to 26 U.S.C. 4181, a tax is imposed on the sale by the manufacturer, importer or producer of pistols, revolvers, firearms (other than pistols and revolvers) shells, and cartridges. The tax is 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. Current regulations provide that no tax is imposed by section 4181 of the Internal Revenue Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm. This notice proposes regulations to clarify which parts and accessories must be included in the sale

price when calculating the tax on firearms.

DATES: Written comments must be received on or before November 27, 1996.

ADDRESSES: ATF, P.O. Box 50221, Washington, DC 20091-0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Regulations Branch, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for collecting the firearms and ammunition excise tax imposed by section 4181. The Pittman-Robertson Wildlife Restoration Act, 16 U.S.C. § 669 et seq., requires that an amount equal to all of the revenue collected under section 4181 be covered into the Federal aid to wildlife restoration fund. The fund is apportioned to the States for hunter safety programs, maintenance of public target ranges, and wildlife and wetlands conservation. It is important that the correct amount of Federal excise tax imposed by section 4181 be collected in order to fund these programs.

The current regulation provides that no tax is imposed by section 4181 of the Internal Revenue Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm. This regulation was at issue in *Auto-Ordnance Corp. versus United States*, 822 F.2d 1566 (Fed. Cir. 1987). In this case a manufacturer of firearms sued to recover excise taxes paid on sights and compensator units sold with rifles it manufactured. The manufacturer claimed that these parts were nontaxable accessories which should not be included in the taxable sale price of the rifles. The Internal Revenue Service (IRS), the agency responsible for administering the tax on firearms at that time, contended that the sights and compensator units were component parts of the rifles which must be included in the taxable sale price.

The court noted that the position of the IRS that all component parts of a "commercially complete" firearm must be included in the sale price was a concept that was not found in the regulations. Since the regulations did not specify which parts are component parts of a firearm nor define the term "accessories," the court found that it was appropriate to look beyond the language of the regulation. The court discussed several dictionary definitions of the term "accessories" as well as

tariff and customs classification cases. The court then held that the sights and compensator units were nontaxable accessories, since they were readily removable and of secondary or subordinate importance to the function of the firearm.

After taking over the administration of the firearms and ammunition excise tax from the IRS in 1991, ATF has issued numerous rulings on parts and accessories. ATF has found it increasingly difficult to apply the regulation on parts and accessories as interpreted by the court in *Auto-Ordnance*. For example, the "secondary or subordinate importance" test is difficult to apply to parts which are essential for the safe operation of the firearm. Arguably, such parts are essential to the function of the firearm and should be included in the taxable sale price. However, if such parts are not needed to fire the firearm, it is possible that a Federal court, applying the rationale of *Auto-Ordnance*, would hold that such parts are nontaxable accessories.

ATF proposes to amend the regulations relating to parts and accessories to provide definitions for "component parts" which must be included in the taxable sale price and "nontaxable parts" and "nontaxable accessories" which are excluded from the taxable sale price. The purpose of these definitions is to reinstate the long-standing "commercial completeness" test of the IRS in a manner which will withstand judicial scrutiny. The effect of the proposals will be to replace the readily removable/essential to the function test of the *Auto-Ordnance* case with a more objective, predictable standard to use in determining whether items sold with a firearm are includible in the tax basis.

It is possible that the proposed regulations will result in increased tax liability for some taxpayers. However, the more precise definitions should help taxpayers accurately calculate the taxable sale price of their firearms and avoid underpayments, penalties, and interest.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking, because the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities, or impose or otherwise cause, an increase in the reporting, recordkeeping or other compliance burdens on a

substantial number of small entities. Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The factual basis for such certification is that this notice of proposed rulemaking does not impose any new reporting or recordkeeping requirements. This notice merely clarifies existing regulations. A copy of this notice of proposed rulemaking is being sent to the Small Business Administration for comment pursuant to 26 U.S.C. 7805(f).

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because there are no new reporting or recordkeeping requirements.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public

inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, 27 CFR Part 53, entitled "Manufacturers Excise Taxes—Firearms and Ammunition" is proposed to be amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 53 continues 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.

Par 2. Section 53.61(b) is revised to read as follows:

§ 53.61 Imposition and rates of tax.

* * * * *

(b) Parts or accessories.

(1) *In general.* No tax is imposed by section 4181 of the Code 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. The tax does attach, however to sales of completed firearms, pistols, revolvers, shells, and cartridges, and to sales of such articles which, although in a knockdown condition, are complete as to all component parts. All component parts for firearms are includible in the tax basis.

(2) *Component Parts.* Component parts are items which would ordinarily be attached to a firearm during use and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer.

(3) *Nontaxable Parts.* Parts sold with firearms which duplicate component parts are not includible in the tax basis.

(4) *Nontaxable Accessories.* Items which are not designed to be attached to a firearm during use or which are not, in the ordinary course of trade, provided with the firearm at the time of sale by the manufacturer or importer are not includible in the tax basis.

(5) *Separate sales.* Tax is imposed on component parts whether or not charges for such parts are billed separately. If taxable articles are sold by the manufacturer, producer, or importer thereof, without component parts, the

separate sale of the component parts to the same vendee will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article, even though the component parts are shipped separately, at the same time, or on a different date.

(6) *Examples.* (i) *In general.* The following examples are provided as guidelines and are not meant to be all inclusive.

(ii) *Component parts:* Include items such as a frame or receiver, breech mechanism, trigger mechanism, a barrel, a buttstock, a forestock, a handguard, grips, buttplate, fore end cap, trigger guard, a sight or set of sights (iron or optical), a sight mount or set of sight mounts, a choke, a flash hider, a muzzle brake, a magazine, a set of sling swivels, an attachable ramrod for muzzle loading firearms when provided by the manufacturer or importer for use with the firearm in the ordinary course of commercial trade. Parts in a partially completed state which can be readily adapted for use. Any part or parts provided with the firearm which would affect the tax status of the firearm, such as an attachable shoulder stock.

(iii) *Nontaxable parts:* Items such as extra barrels, extra sights, optical sights and mounts (in addition to iron sights), spare magazines, spare cylinder, extra choke tubes, spare pins.

(iv) *Nontaxable accessories:* Items such as cleaning equipment, slings, slip on recoil pad (in addition to standard buttplate), tools, gun cases for storage or transportation, separate items such as knives, belt buckles, medallions. Optional items purchased by the customer at the time of retail sale which do not change the tax classification of the firearm, such as telescopic sights and mounts, recoil pad, slings, sling swivels, chokes, flash hidere/muzzle brakes of a type not provided by the manufacturer or importer of the firearm in the ordinary course of commercial trade.

* * * * *

Signed: May 29, 1996.

John W. Magaw,
Director.

Approved: June 12, 1996.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96-22044 Filed 8-28-96; 8:45 am]

BILLING CODE 4810-31-U