



Tobacco Product Tax Classification

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Overview

- Statutory and regulatory definitions of tobacco products.
- Other guidance available regarding tax classification of certain products.
- Procedure for requesting a tax classification determination from TTB.

“Tobacco Products”

The term “tobacco products” means:

- Cigars, cigarettes, smokeless tobacco (snuff or chewing tobacco), pipe tobacco, and roll-your-own tobacco

See 26 U.S.C. 5702(c)

Tax Rates

- Small cigars:
 - \$50.33/1,000
- Large cigars:
 - 52.72% of sale price not to exceed \$0.4026 per cigar
- Small cigarettes:
 - \$50.33/1,000
- Large cigarettes:
 - \$105.69/1,000
- Snuff:
 - \$1.51/lb
- Chewing tobacco:
 - \$0.5033/lb
- Pipe tobacco
 - \$2.8311/lb
- Roll-your-own tobacco
 - \$24.78/lb

Tobacco Product Classifications

- Cigars – large and small
- Cigarettes – large and small
- Snuff
- Chewing Tobacco
- Pipe Tobacco
- Roll-Your-Own Tobacco

Definition – Cigar

“Cigar” means — any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of that term).

**26 U.S.C. 5702(a)
and 5701(a)**

Definition – Cigarette

“Cigarette” means —

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
- (2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (1).

26 U.S.C. 5702(b)

Cigars vs. Cigarettes — the wrapper

For a wrapper to be considered a “substance containing tobacco” it must be:

- Approximately 2/3 or more tobacco which did not in the reconstitution process lose its tobacco character (e.g. taste, aroma, identifiable chemical components), and
- Of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars.

ATF Ruling 73-22

(Continued)

Cigars vs. Cigarettes — “other factors”

- **The filler:** For a product to be a cigar, it must be substantially of tobaccos unlike those in ordinary cigarettes (flue-cured or aromatic (Oriental) tobaccos) and must not have added flavorings which would cause it to have the taste/aroma of cigarettes.
- **The appearance and package:** If the product has a typical cigarette size and shape, filter, and package, the inclusion of typical cigarette tobaccos may cause it to be classified as a cigarette. A package for a cigar must conspicuously declare it a cigar and have no representations that would negate that declaration.



Cigars vs. Cigarettes – Notice No. 65

On October 25, 2006, TTB published Notice No. 65, which proposed:

- **Total reducing sugars standard**: If the filler contains more than 3.0 percent by weight of total reducing sugars, the filler is consistent with cigarette filler.
- **Other factors**: If the product is a typical cigarette size and shape, has a filter, or is put up in traditional cigarette-type packaging without bearing required notices, the product is consistent with a cigarette.

Definitions – Smokeless Tobacco

“Smokeless Tobacco” means — any snuff or chewing tobacco:

- “Snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked.
- “Chewing tobacco” means any leaf tobacco that is not intended to be smoked.

26 U.S.C. 5702(m)

Other Guidance – Snuff vs. Chewing Tobacco

- Procedure 87-4:
 - Set forth a sieving operation using a “10 mesh screen” and measuring the percentage of particles falling through the screen.
 - Is employed only when it is not readily apparent from other available information (visual appearance, method of manufacture, etc.) whether the product is chewing tobacco or snuff.



Definitions – Pipe Tobacco and Roll-Your-Own

- **“Pipe Tobacco”** means — any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
- **“Roll-Your-Own Tobacco”** means — any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

26 U.S.C. 5702(n) and (o)

Roll-your-own tobacco vs. reconstituted tobacco sheets

- Sheets of reconstituted tobacco that are in sizes that cannot be readily used by the ultimate consumer as wrappers for cigars without further manipulation are not “roll-your-own” tobacco as contemplated by 26 U.S.C. 5702(o) as amended.

(posted on the TTB website on March 26, 2009, at <http://www.ttb.gov/tobacco/amended-definition.shtml>)



Other Guidance - RYO (Continued)

Roll-your-own tobacco vs. pipe tobacco

- Currently, no regulatory standard exists to differentiate.
- We are evaluating methods and foresee providing specific guidance in this regard in the future
- In the meantime, packaging and labeling of the products will have particular significance.

(posted on the TTB Web site at

http://www.ttb.gov/main_pages/pipe-tobacco.shtml)



Definition – Processed Tobacco

Processed tobacco is any tobacco (excluding tobacco products) that has undergone processing, including stemming (that is, removing the stem from the tobacco leaf), fermenting, threshing, cutting, or flavoring the tobacco, or otherwise combining the tobacco with non-tobacco ingredients.

The processing of tobacco does not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco, nor does the processing of tobacco include curing, baling, or packaging activities.



Classification – Processed Tobacco vs. Tobacco Product

Any tobacco that has been processed and that is removed in a package that does not bear the notice required for smokeless tobacco or for pipe tobacco is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco.

27 CFR 40.25a(b)(2)



Classification – RYO vs. Pipe Tobacco

Even if the package bears the notice for pipe tobacco, it may still be deemed to be roll-your-own tobacco if:

- (i) The package does not bear the declaration “pipe tobacco” in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears on the package; or
- (ii) The package or accompanying materials bear any representation that would suggest a use other than as pipe tobacco.

27 CFR 40.25a(b)(3)



Tax Classification Determinations

- Tobacco product manufacturers and importers have the initial responsibility for determining tax classification of their products.
- RRD will accept submissions of products and issue a ruling on a product's taxable status.
- The TTB Laboratory analyzes the product and provides its analytical results to RRD to aid in classification of the product.
- Such a ruling does not imply that products are “approved” for use or importation if other agencies prohibit or restrict their use or importation.

Requesting a Tax Classification Determination

**TTB.gov**
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
U.S. Department of the Treasury

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Tobacco Button

Quick Links

Submission of Tobacco Products for Tax Classification

Q: How much sample should I send?

A: Generally, one unopened consumer package of the product is sufficient. (For example, one pack of cigarettes or one tin of snuff.) For cigars or cigarettes, a minimum of 10 sticks should be submitted. For ground and leaf tobacco products where a consumer size package is not available, 500 grams is usually sufficient.

Q: How should I send the samples?

A: All sample products must be sealed in airtight bags and must include a cover letter providing contact information, and if possible, the intended use of the product. Samples considered evidence must be sent via express courier.

Q: Where should I send the samples?

A: All samples must be sent to the following address:

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Organizational Chart

Laboratory Forms

Drawback Tutorial

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Methods and Procedures

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Language Links



Contact Information

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