

SPECIAL ATTENTION is directed to the cautionary notice on this page that published rulings of the Bureau do not have the force and effect of Treasury Decisions and that they are applicable only to facts presented in the published case

Treasury Department : : : : : Bureau of Internal Revenue

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The rulings reported in the Internal Revenue Bulletin are for the information of taxpayers and their counsel as showing the trend of official opinion in the administration of the Bureau of Internal Revenue; the rulings other than Treasury Decisions have none of the force or effect of Treasury Decisions and do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary of the Treasury. Each ruling embodies the administrative application of the law and Treasury Decisions to the entire state of facts upon which a particular case rests. It is especially to be noted that the same result will not necessarily be reached in another case unless all the material facts are identical with those of the reported case. As it is not always feasible to publish a complete statement of the facts underlying each ruling, there can be no assurance that any new case is identical with the reported case. As bearing out this distinction, it may be observed that the rulings published from time to time may appear to reverse rulings previously published.

Officers of the Bureau of Internal Revenue are especially cautioned against reaching a conclusion in any case merely on the basis of similarity to a published ruling, and should base their judgment on the application of all pertinent provisions of the law and Treasury Decisions to all the facts in each case. These rulings should be used as aids in studying the law and its formal construction as made in the regulations and Treasury Decisions previously issued.

In addition to publishing all Internal Revenue Treasury Decisions, it is the policy of the Bureau of Internal Revenue to publish all rulings and decisions, including opinions of the Assistant General Counsel for the Bureau of Internal Revenue, which, because they announce a ruling or decision upon a novel question or upon a question in regard to which there exists no previously published ruling or decision, or for other reasons, are of such importance as to be of general interest. It is also the policy of the Bureau to publish all rulings or decisions which revoke, modify, amend, or affect in any manner whatever any published ruling or decision. In many instances opinions of the Assistant General Counsel for the Bureau of Internal Revenue are not of general interest because they announce no new ruling or no new construction of the revenue laws but simply apply rulings already made public to certain situations of fact which are without special significance. It is not the policy of the Bureau to publish such opinions. Therefore, the numbers assigned to the published opinions of the Assistant General Counsel for the Bureau of Internal Revenue are not consecutive. No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Bureau of Internal Revenue as a precedent in the disposition of other cases. Unless otherwise specifically indicated, all published rulings and decisions have received the consideration and approval of the Assistant General Counsel for the Bureau of Internal Revenue.

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It is, therefore, the opinion of this office, in accordance with a prior published opinion (S. T. 666, C. B. XII-1, 464), that the Federal taxation of liquor is in no wise inconsistent with the declared policies of several States to prohibit or regulate the liquor traffic.

ROBERT H. JACKSON,
*Assistant General Counsel for the
Bureau of Internal Revenue.*

**NATIONAL FIREARMS ACT (APPROVED JUNE 26, 1934,
PUBLIC, NO. 474, SEVENTY-THIRD CONGRESS).**

SECTION 1.

REGULATIONS 88, ARTICLE 20: Meaning of terms. XIII-38-7034
S. T. 771

Meaning of the words "any other weapon" as used in section 1
of the National Firearms Act.

Section 1 of the National Firearms Act (approved June 26, 1934,
Public, No. 474, Seventy-third Congress), reads in part as follows:

(a) The term "firearm" means a shotgun or rifle having a barrel of less than 18 inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

The words "any other weapon," as used in the law, do not include shotguns or rifles having a barrel of 18 inches or more in length, pistols, or revolvers, but do include all other weapons from which a shot is discharged by an explosive, provided such weapons are capable of being concealed on the person.

REGULATIONS 88, ARTICLE 20: Meaning of terms. XIII-38-7035
S. T. 772

Types of "firearms" within the meaning of the National Fire-
arms Act.

Section 1 of the National Firearms Act (approved June 26, 1934,
Public, No. 474, Seventy-third Congress) reads in part as follows:

(a) The term "firearms" means a shotgun or rifle having a barrel of less than 18 inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

(b) The term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

A so-called shotgun with a pistol grip, which fires a shot shell, falls within the class of "any other weapon," within the meaning of

section 1(a) of the Act. If such a gun is capable of being concealed on the person, it is a "firearm" subject to the provisions of the Act.

A shotgun or rifle having a barrel of less than 18 inches in length, either when manufactured or after being sawed or cut off subsequent to manufacture, is a "firearm," as defined in section 1(a) of the Act.

A semiautomatic pistol or an autoloading pistol when converted into a weapon which shoots automatically, that is, one capable of discharging the entire capacity of its magazine with one pull of the trigger, ceases to be a pistol and becomes a "machine gun," as defined in section 1(b) of the Act.

A line-throwing gun which has an unrifled barrel in which is used a shell loaded with powder only is not a "firearm" subject to the provisions of the Act.

REGULATIONS 88, ARTICLE 20: Meaning of terms.

XIII-40-7053

S. T. 775

A company which buys firearms, renovates and sells them, and has finished parts which may be assembled into machine guns is a "manufacturer" of firearms.

The question is presented whether the B Company, which is engaged within the continental United States in the business of buying firearms, renovating and selling them, and in the wholesale repairing and refinishing of military arms for the United States Government and foreign countries, and has on hand finished parts which can be assembled into machine guns, is a "manufacturer" of firearms and subject to the special tax imposed by section 2(a) of the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress).

Section 1 of the National Firearms Act reads in part as follows:

(f) The term "manufacturer" means any person who is engaged within the continental United States in the manufacture of firearms, or who otherwise produces therein any firearm for sale or disposition.

Since the B Company is engaged in the business of buying firearms, which it renovates and sells, and has on hand finished parts which can be assembled into machine guns, it is held that the company is a "manufacturer," as defined in section 1(f) of the National Firearms Act, supra, and is subject to the special tax of \$500 a year imposed by section 2(a) of the Act.

REGULATIONS 88, ARTICLE 20: Meaning of terms.

XIII-40-7054

(Also Section 3(a) and Article 61.)

S. T. 776

Tax liability of pledgor and pledgee where a firearm is pledged as security for a loan.

A ruling is requested relative to the tax liability of a pledgor and pledgee, under the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress), where a firearm is pledged as security for a loan.

Section 1 of the National Firearms Act reads in part as follows:

(g) The term "dealer" means any person not a manufacturer or importer engaged within the continental United States in the business of selling firearms. The term "dealer" shall include wholesalers, pawnbrokers, and dealers in used firearms.

(k) The term "to transfer" or "transferred" shall include to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

Section 3(a) of the Act reads as follows:

There shall be levied, collected, and paid upon firearms transferred in the continental United States a tax at the rate of \$200 for each firearm, such tax to be paid by the transferor, and to be represented by appropriate stamps to be provided by the Commissioner, with the approval of the Secretary; and the stamps herein provided shall be affixed to the order for such firearm, hereinafter provided for. The tax imposed by this section shall be in addition to any import duty imposed on such firearm.

The making of a loan on a firearm involves the pledging of the weapon as security for the loan. Under the provisions of section 1(k) of the Act such a transaction constitutes a transfer. The person obtaining the loan (pledgor) is the transferor and, as such, is subject to the tax of \$200 imposed on transfers of firearms by section 3(a) of the Act.

Under the provisions of section 1(g) of the Act the term "dealer" includes wholesalers, pawnbrokers, and dealers in used firearms. Where a loan is made on a firearm by a person coming within any of these classifications, the one making the loan (pledgee) is a dealer within the meaning of section 1(g) of the Act, and is, therefore, subject to the special tax imposed upon dealers by section 2(a) of the Act. It is not necessary that title to the firearm pass from the pledgor to the pledgee to make them liable for the taxes specified.

REGULATIONS 88, ARTICLE 20: Meaning of terms.

XIII-42-7078
S. T. 779

Taxability of a particular type of weapon under section 1(a) of the National Firearms Act.

Section 1 of the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress) reads in part as follows:

(a) The term "firearm" means a shotgun or rifle having a barrel of less than 18 inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

The words "any other weapon" as used in the law do not include shotguns or rifles having a barrel of 18 inches or more in length, or pistols or revolvers, but those words do include all other weapons from which a shot is discharged by an explosive, provided such weapons are capable of being concealed on the person (page 433, this Bulletin).

The gun in question is a single shot, single trigger, and single hammer gun with a pistol grip, and is chambered for shot loads. It is

so compact that it may be strapped over the shoulder either under or over the coat.

The test prescribed by the Act for determining whether a particular gun comes within the classification of "any other weapon" as used in section 1(a) of the Act is not the length of the barrel, but whether the weapon is capable of being concealed on the person. Inasmuch as the gun in question is capable of being concealed on the person, it comes within the classification of "any other weapon," within the meaning of section 1(a) of the Act, and is, therefore, subject to the provisions of the Act.

REGULATIONS 88, ARTICLE 20: Meaning of terms.

XIII-43-7094
S. T. 782

The length of the barrel of a shotgun or rifle is measured by the length of its bore.

The question is presented whether a shotgun or rifle having a barrel inclosed in a metal casing 18 inches or more in length, the length of the bore being less than 18 inches, is subject to the provisions of the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress).

Section 1 of the National Firearms Act reads in part as follows:

(a) The term "firearm" means a shotgun or rifle having a barrel of less than 18 inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

The length of the barrel of a shotgun or rifle is measured by the length of its bore. A shotgun or rifle having a bore of less than 18 inches in length, regardless of the length of the metal casing in which the barrel is inclosed, is a "firearm" within the meaning of section 1(a) of the Act, and, therefore, is subject to the provisions of the Act.

REGULATIONS 88, ARTICLE 20: Meaning of terms.

XIII-50-7183
S. T. 788

A pistol with a case which may be used as a shoulder stock is a "firearm" within the meaning of the National Firearms Act.

Inquiry is made whether a pistol with a case which may be attached to the pistol grip and used as a shoulder stock is a firearm within the meaning of section 1 of the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress).

Section 1 of the National Firearms Act reads in part as follows:

(a) The term "firearm" means a shotgun or rifle having a barrel of less than 18 inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

Considered without the case, the weapon is a pistol and is not subject to the provisions of the Act. However, since the pistol and the case may be operated together, they must be considered as a unit. It is the evident purpose of the Act to subject to its provisions every weapon held out as and adapted to use as a firearm, as defined in the Act, even though it may be capable of other use. A pistol or revolver is a weapon designed to be held in one hand when fired and not braced against any part of the body. When the case is attached to the pistol as a stock, the pistol loses its identity as such and comes within the term "any other weapon" as used in the law.

SECTION 2.

REGULATIONS 88, ARTICLE 33: Registry and return required.

XIII-46-7131
S. T. 784

Tax liability where business of selling firearms is abandoned.

The question is presented whether a person who, prior to July 26, 1934, was engaged in the business of selling firearms, as defined in the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress), and who abandoned such business, is liable for the special tax imposed upon dealers in firearms by section 2(a) of that Act.

Section 2(a) of the National Firearms Act imposes a special tax of \$200 a year upon dealers in firearms, other than pawnbrokers.

Section 1(g) of the Act reads as follows:

* * * The term "dealer" means any person not a manufacturer or importer engaged within the continental United States in the business of selling firearms. The term "dealer" shall include wholesalers, pawnbrokers, and dealers in used firearms.

Where a person was engaged in the business of selling firearms, as defined in the Act, prior to July 26, 1934, it will be presumed that such person is continuing that business and is subject to the special tax applicable thereto unless steps were promptly taken indicative of a *bona fide* intention wholly to abandon the business. If the person thus desiring to abandon the business of dealing in firearms withdrew from sale and display all firearms in his possession, took the proper steps to insure that such firearms would not be sold by him or on his behalf, and filed a statement with the collector of internal revenue for his district to the effect that he made no sales on or after July 26, 1934, and has abandoned the business of selling firearms, with a satisfactory explanation of the steps taken to prevent any future sale or transfer, liability to the special tax as a dealer under the Act will not be incurred. All firearms so withdrawn from sale must, however, be registered on Form 1 (Firearms), in duplicate, with the collector for the district in which the registrant resides.

SECTION 3.

REGULATIONS 88, ARTICLE 61: Scope of tax.

XIII-49-7173
S. T. 787

Tax liability where shotguns or rifles which are "firearms" are returned to the manufacturer for conversion into weapons other than "firearms."

The question is presented whether the return to the manufacturer of shotguns or rifles having barrels of less than 18 inches in length for refitting with barrels 18 inches or more in length constitutes a transfer subject to the tax imposed by section 3(a) of the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress).

Section 3(a) of the National Firearms Act imposes a tax of \$200 upon each firearm, as defined in the Act, transferred within the continental United States on or after July 26, 1934.

Section 1(k) of the Act reads as follows:

The term "to transfer" or "transferred" shall include to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

Where a shotgun or rifle having a barrel of less than 18 inches in length is returned to the manufacturer for refitting with a barrel 18 inches or more in length, liability for the transfer tax imposed by section 3(a) of the Act is not incurred. In such a case the person returning the shotgun or rifle must immediately notify the collector of internal revenue for his district of the return of the firearm. This notice must show the kind of firearm returned, the serial number, model, and caliber thereof, and the date appearing on registration Form 1 (Firearms). The manufacturer must immediately report the receipt of the shotgun or rifle on Form 2 (Firearms). When a new barrel is fitted on a shotgun or rifle returned for that purpose, Form 3 (Firearms), showing the disposition made of the old barrel, must be filed by the manufacturer with the collector of internal revenue for his district.

SECTION 5.

REGULATIONS 88, ARTICLE 80: Registration of firearms.

XIII-38-7036
S. T. 773

Registration of firearms.

Inquiry is made whether a person owning more than one firearm subject to registration under the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress) must register each firearm separately.

Pursuant to the provisions of section 5(a) of the law and article 80 of Regulations 88, every person residing in the continental United States in possession on July 26, 1934, of a firearm, as defined by the Act, shall on or before September 24, 1934 (whether or not the firearm is still in his possession on the latter date), register it on Form 1 (Firearms), in duplicate, with the collector for the district in which he resides.

Where a person owns more than one firearm subject to registration under the Act each such firearm should be registered separately on

Form 1 (Firearms), in duplicate, except that importers, manufacturers, or dealers, including wholesalers, pawnbrokers, and dealers in used firearms, may attach to the form a schedule containing in tabular form all of the information called for in respect of all the firearms in his possession instead of filing a separate form for each firearm.

REGULATIONS 88, Article 80: Registration of
firearms.

XIII-42-7080
S. T. 780

Firearms held as curios or antiques, and firearms in possession of Federal, State, and municipal law enforcement officers must be registered under the National Firearms Act.

The question is presented whether firearms held as curios or antiques, and firearms in possession of Federal, State, or municipal law enforcement officers are subject to the registration provisions of the National Firearms Act (approved June 26, 1934, Public, No. 474, Seventy-third Congress).

Pursuant to the provisions of section 5(a) of the Act and article 80 of Regulations 88, every person residing in the continental United States who was in possession on July 26, 1934, of a firearm (as defined by the Act) is required on or before September 24, 1934 (whether or not the firearm is still in his possession on the latter date), to register it on Form 1 (Firearms), in duplicate, with the collector for the district in which he resides.

Every firearm (as defined by the Act) is subject to registration in accordance with the provisions of section 5(a) of the Act and article 80 of Regulations 88. Accordingly, firearms (as defined in the Act), even though held as curios or antiques, which were in possession of any person residing in the continental United States on July 26, 1934, must be registered. Likewise, all firearms (as defined by the Act) which were in the possession on July 26, 1934, of Federal law enforcement officers, sheriffs, chiefs of police, commissioners of police, superintendents or other chief officers of State police units, including State highway patrols, and directors of public safety, or other law enforcement officers residing in the continental United States come within the terms of the National Firearms Act and are subject to its registration provisions.

XIII-33-6967
T. D. 4461

Special tax.—Section 2(a), National Firearms Act of June 26, 1934.—Authorization to accept returns without incurring 25 per cent penalty.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

Section 2(a) of the National Firearms Act provides that every manufacturer, importer, and dealer (including pawnbrokers) in firearms must, within 15 days after the effective date of the Act (July

26, 1934), that is, on or before August 10, 1934, or upon first engaging in business, registered and pay special tax, as follows:

Importers or manufacturers.....	\$500 a year.
Dealers, other than pawnbrokers.....	\$200 a year.
Pawnbrokers.....	\$300 a year.

As Form 11-A (Firearms), Special tax return and application for registry, will not be available for distribution in time to permit filing of such returns before the date prescribed, namely, August 10, 1934, collectors of internal revenue are authorized to accept such returns filed on or before August 31, 1934, without the assertion of the 25 per cent penalty for delinquency.

The Act provides:

(a) The term "firearm" means a shotgun or rifle having a barrel of less than 18 inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

(b) The term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

WRIGHT MATTHEWS,

Acting Commissioner of Internal Revenue.

Approved August 6, 1934.

H. MORGENTHAU, Jr.,

Secretary of the Treasury.