

26 U.S.C. § 5845(f)(2): DESTRUCTIVE DEVICE

(Nonsporting shotgun having a bore of more than one-half inch in diameter)

The Striker-12/Streetsweeper shotgun has a bore of more than one-half inch in diameter and is not generally recognized as particularly suitable for sporting purposes. Therefore, it is classified as a destructive device for purposes of the National Firearms Act, 26 U.S.C. Chapter 53.

ATF Rul. 94-2

[Status of ruling: Active]

The Bureau of Alcohol, Tobacco and Firearms (ATF) has examined a firearm identified as the Striker-12/Streetsweeper shotgun to determine whether it is a destructive device as that term is used in the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

The Striker-12 and Streetsweeper shotguns are virtually identical 12-gauge shotguns with a spring-driven revolving magazine. The magazine has a 12-round capacity. The shotgun has a fixed stock or folding shoulder stock and may be fired with the folding stock collapsed. The shotgun with an 18-inch barrel is 37 inches in length with the stock extended, and 26.5 inches in length with the stock folded. The shotgun is 5.7 inches in width and weighs 9.24 pounds unloaded. The Striker/Streetsweeper has two pistol grips, one in the center of the firearm below the buttstock, and one on the forearm. The Striker/Streetsweeper was designed and developed in South Africa as a military, security, and anti-terrorist weapon. Various types of 12-gauge cartridge can be fired from the shotgun, and a rapid indexing procedure allows various types of ammunition to be loaded into the cylinder and selected for firing. All 12 rounds can be fired from the shotgun in 3 seconds or less.

Section 5845(f), Title 26, U.S.C., classifies certain weapons as “destructive devices” which are subject to the registration and tax provisions of the NFA. Section 5845(f)(2) provides as follows:

(f) *Destructive device.*--The term “destructive device” means * * * (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes; . . .”

A “sporting purposes” test which is almost identical to that in section 5845(f)(2) appears in 18 U.S.C. § 925(d)(3). This provision of the Gun Control Act of 1968 (GCA) provides that the Secretary shall authorize a firearm to be imported into the United States if the firearm is “generally recognized as particularly suitable for or readily adaptable to sporting purposes.” With the exception of the “readily adaptable” language, this provision is identical to the sporting shotgun exception to the destructive devices definition. The definition of “destructive device” in the GCA (18 U.S.C. § 921(a)(4)) is identical to that in the NFA.

In determining whether shotguns with a bore of more than one-half inch in diameter are “generally recognized as particularly suitable for sporting purposes” and thus are not destructive devices under the NFA, we believe it is appropriate to use the same criteria used for evaluating shotguns under the “sporting purposes” test of section 925(d)(3). Congress used virtually identical language in describing the weapons subject to the two statutory schemes, and the language was added to the GCA and NFA at the same time.

In 1984, ATF ruled that the Striker-12 was not eligible for importation under section 925(d)(3) since it is not particularly suitable for sporting purposes. In making this determination, the 1984 letter-ruling notes that the Striker was being used in a number of “combat” shooting events. In a letter dated June 30, 1986, ATF again denied importation to the Striker-12, on the basis that it did not meet the “sporting purposes” test of section 925(d)(3). This letter states that, “We believe the weapon to have been specifically designed for military and law enforcement uses.”

In evaluating the physical characteristics of the Striker 12/Streetsweeper, ATF concludes that the weight, bulk, designed magazine capacity, configuration, and other features indicate that it was designed primarily for military and law enforcement use and is not particularly suitable for sporting purposes.

The weight of the Striker-12/Streetsweeper, 9.24 pounds unloaded, is on the high end for traditional 12-gauge sporting shotguns, which generally weigh between 7 and 10 pounds. Thus, the weight of the Striker-12/Streetsweeper makes it awkward to carry for extended periods, as in hunting, and cumbersome to fire at multiple small moving targets, as in skeet and trap shooting. The width of the Striker-12/Streetsweeper, 5.7 inches, far exceeds that of traditional sporting shotguns, which do not exceed three inches in width or four inches in depth. The large size and bulk of the Striker-12/Streetsweeper make it extremely difficult to maneuver quickly enough to engage moving targets as is necessary in hunting, skeet, and trap shooting. The spring driven revolving magazine with 12-cartridge capacity is a much larger capacity than traditional repeating sporting shotguns, which generally contain tubular magazines with a capacity of 3-5 cartridges. The folding shoulder stock and the two pistol grips are not typical of sporting-type shotguns. Finally, the overall appearance and general shape of the weapon are radically different from traditional sporting shotguns and strikingly similar to shotguns designed specifically for or modified for combat and law enforcement use.

Section 7805(b), Title 26, U.S.C., provides that the Secretary may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. Accordingly, all rulings issued under the Internal Revenue Code are applied retroactively unless they specifically provide otherwise. Pursuant to section 7805(b), the Director, as the delegate of the Secretary, may prescribe the extent to which any ruling will apply without retroactive effect.

Held: The Striker-12/Streetsweeper is a shotgun with a bore of more than one-half inch in diameter which is not particularly suitable for sporting purposes. The weight, size, bulk, designed magazine capacity, configuration, and other factors indicate that the Striker-12/Streetsweeper is a military-type shotgun, as opposed to a shotgun particularly suitable for sporting purposes. Accordingly, the Striker-12/Streetsweeper is a destructive device as that term is used in 26 U.S.C. § 5845(f)(2). Pursuant to section 7805(b), this ruling is applied

prospectively effective March 1, 1994, with respect to the making, transfer, and special (occupational) taxes imposed by the NFA. All other provisions of the NFA apply retroactively effective March 1, 1994.