

ATF Ruling 97-2

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked to determine whether a 1919 A-4 semiautomatic firearm and 1919 A-6 semiautomatic rifle are "portable" firearms subject to tax when sold by their importer or manufacturer pursuant to 26 U.S.C. § 4181.

The taxpayer manufactures and sells the 1919 A-4 semiautomatic firearm and the 1919 A-6 semiautomatic rifle. Both firearms are semiautomatic versions of the Browning 1919 machinegun. They are recoil operated, belt fed, air cooled weapons. The 1919 A-6 is sold with a bipod and has a buttstock which enables it to be fired from the shoulder. The approximate weight of the unloaded weapon with shoulder stock is 30 pounds, excluding the bipod. The overall length of the weapon is approximately 53 inches.

The 1919 A-4 is similar to the A-6 rifle, with the exception that it has no buttstock and is intended to be used with a tripod mount. The overall length of the 1919 A-4 is approximately 39 inches. The weight of the unloaded weapon, excluding the tripod, is approximately 31 pounds.

Section 4181, Title 26, U.S.C., imposes upon the sale by the manufacturer, producer or importer a tax equivalent to 10 percent of the sale price of pistols and revolvers and a tax equivalent to 11 percent of the sale price of firearms (other than pistols and revolvers), shells, and cartridges.

The term "firearm" is defined in the regulations in 27 C.F.R. § 53.11 to mean any portable weapons, such as rifles, carbines, machineguns, shotguns, or fowling pieces, from which a shot, bullet, or other projectile may be discharged by a projectile. There are no regulations or published rulings defining the term "portable." However, ATF has issued a number of private letter rulings interpreting the term "portable" to mean that the firearm is capable of being carried by a person.

Discussion

The taxpayer contends that the 1919 A-4 and 1919 A-6 are not "portable" and, therefore, are not "firearms" subject to tax. The taxpayer states that the 1919 A-4 and 1919 A-6 machineguns were originally designed as crew-served weapons intended to be transported in segments and manned by a team of four or five individuals. The taxpayer notes that the weight of a team's load with only a minimum of ammunition approaches 100 pounds. In addition, the taxpayer argues that these weapons cannot, except in extraordinary circumstances, be fired from the standing position or deployed while on the move. Finally, the taxpayer acknowledges that the 1919 machinegun can be lifted and carried by an individual, but states that it cannot be taken on a typical military 20-mile forced march.

In support of the above allegations, the taxpayer cites a variety of sources, including Department of the Army Field Manual 23-55, dated 1945 and 1955. Examination of this manual indicates that the Browning 1919 A-6 and 1919 A-4 were originally designed as crew-served machineguns. However, the 1965 version of this manual also shows the 1919 A-6 machinegun equipped with a carrying handle which allows the weapon to be transported by the use of a single hand. This manual includes illustrations of an individual soldier transporting the machinegun with a single hand and firing the machinegun while holding it in a standing position. FM-23-55,

Browning Machineguns, Caliber 30, M1919A6 and M37, Department of the Army, July 1965, Figure 7 (page 7) and Figure 78 (page 57).

The taxpayer's allegations concerning the requirements of a 4-5 member squad to transport the weapon are also called into question by information in the FM 23-55 manual. Page 52 of the manual sets forth the following list of the equipment a four-member

A-6 team must carry:

Squad leader Binocular, compass.

Gunner Machinegun, 1 box ammunition.

Assistant gunner, 1 spare barrel, spare parts chest (containing traversing and elevating mechanism), 1 box ammunition.

Ammunition bearer, Tripod mount, 2 boxes ammunition.

In reviewing this list of equipment, it is apparent that the taxpayer's claim that the team's load easily approaches 100 pounds is probably accurate. However, it is also apparent that the bulk of that load is attributable to the extra ammunition and spare parts indicated above. Moreover, the fact that a single individual, the gunner, is responsible for transporting the weapon indicates the belief of the Army that the 1919 A-6 machinegun can be transported by a single soldier.

The FM 23-55 manual also illustrates an individual soldier firing or preparing to fire the A-6 rifle in an "assault" or standing position. The manual states that, due to the weight and design of the weapon, this method of employment is not recommended. FM-23-55, page 7.

In evaluating the length, weight, and bulk of the two firearms, ATF concludes that the 1919 A-4 and 1919 A-6 semiautomatic firearms are portable weapons within the meaning of 27 C.F.R. § 53.11. With respect to the 1919 A-6 rifle, the unloaded weight of approximately 30 pounds is not difficult for an average person to lift and carry. Nor is the overall length of 53 inches overly cumbersome for an individual to carry and maneuver. The fact that the 1919 A-6 may be equipped with an integral carrying handle is further evidence that it was designed to be carried by a single person. Moreover, inclusion of a shoulder stock on the 1919 A-6 indicates that it is intended to be fired from the shoulder. This is supported by the information in the Army field manual, which illustrates military deployment and transportation of the 1919 A-6 machinegun by individual soldiers. Although the manual does not recommend that the weapon be fired from a standing position, it is apparent that the Army believes the weapon can be transported and fired by an individual soldier.

With respect to the 1919 A-4 firearm, which is similar in design to the 1919 A-6 rifle, ATF concludes that this firearm is likewise "portable" within the meaning of 27 C.F.R. § 53.11. The overall weight of the unloaded weapon, approximately 31 pounds, indicates that it is capable of being carried by a single individual. The overall length of approximately 39 inches indicates that the weapon is compact and easily maneuverable. Although the weapon is designed to be fired from a tripod mount, it can be carried and fired without the mount.

Finally, ATF does not believe the term "portable" should be narrowly construed to exclude weapons which cannot be carried on a 20-mile march, as suggested by the taxpayer. Such an interpretation would exclude from the category of taxable firearms all but handguns and relatively lightweight long guns. There is no evidence that Congress intended such a narrow interpretation or that the Internal Revenue Service, ATF's predecessor in administering section 4181, has ever interpreted the statute in such a manner. Accordingly, ATF will continue to interpret the term "portable" in a common sense manner to mean that the weapon is capable of being carried by a person.

Held: The 1919 A-4 and 1919 A-6 semiautomatic firearms are "portable weapons" within the definition of "firearm" in 27 C.F.R. S 53.11. Therefore, the firearms are subject to the excise tax imposed by 26 U.S.C. § 4181 when sold by their manufacturer or importer.

26 U.S.C. 4181 and
27 C.F.R. 53.11: Definition of "Firearm."