

PASSENGER FAILURE TO DECLARE - 19 U.S.C. 1497

I. In General

These provisions and procedures are applicable when passengers, either residents or non-residents, entering the United States fail to declare merchandise to Customs, even though legally required to do so. In the case of merchandise being imported from non-contiguous countries, the applicable statute is 19 U.S.C. 1497, which provides for both forfeiture and penalty liabilities.

II. Declaration Requirements

- A. Technically, all merchandise brought into the United States must be declared (19 C.F.R. 148.18).
- B. For purposes of penalty actions, generally look at merchandise which was acquired abroad and presume that all other merchandise was declared.
- C. Oral declarations permitted if (19 C.F.R. 148.12):
 - 1. Returning resident is bringing in no more than \$400 in merchandise (\$600 in the case of a direct arrival from a Caribbean Basin Initiative beneficiary country with not more than \$400 of which having been acquired elsewhere than in a beneficiary country, \$1,200 from American Samoa, Guam, VI, Northern Marianas) with nothing in bond or for sale.
 - 2. Non-resident is carrying only duty-exempt merchandise.
 - 3. Person is carrying small number of easily identifiable articles.
- D. Written declarations required in all other cases.

III. Amendment of Declarations Permitted - 19 C.F.R. 148.16

- A. Any time before baggage examination starts.
- B. After examination starts, no undeclared article has been found and there is no fraudulent intent.

IV. Elements of the Violation

- A. A failure to declare articles legally required to be declared.
- B. Intent to violate the statute is not a necessary element.

V. Violator's Liability - 19 U.S.C. 1497

- A. Forfeiture of undeclared merchandise, and
- B. Personal penalty equal to domestic value of undeclared merchandise.

VI. Minor Violations

- A. These occur through oversight, misinformation, unintentional act, and involve articles of relatively small value.
- B. Concern articles acquired abroad and not declared, which are not prohibited or restricted, and
 - 1. Which would be tax and duty-free if properly declared, or
 - 2. Are not tax and duty-free but are valued at less than \$100.
- C. Action: If no fraudulent intent found, as general rule do not initiate penalty action. Collect duties due.

VII. Serious Violations

- A. Several types:
 - 1. Willful, for example, concealment.
 - 2. Articles of considerable value involved.
 - 3. Commercial merchandise involved.
 - 4. Prohibited or restricted articles involved.
 - 5. False claim about exemptions made, for example, claim that \$400 exemption has not been used within 30 days.
 - 6. Cases in which, because of the circumstances, merely collecting duty would not serve law enforcement purposes.
- B. Action: Initiate a penalty action - seize merchandise and assess personal penalty in amount of its domestic value.

VIII. Guidelines for Disposition of Violations of 19 U.S.C. 1497

See, 19 C.F.R. Part 171, Appendix A

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (See, also part 148, Customs Regulations):

A. *Violations Involving Dutiable Articles.* For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. Mitigated Penalty for First Offense. For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than \$50), or the domestic value, whichever is lower.

2. Mitigating Factors. When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. Aggravating Factors. When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than \$100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. Commercial Articles. When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than \$100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. Extraordinary Mitigating Factor.

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. Extraordinary Aggravating Factors.

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than \$250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

B. *Violations Involving Absolutely or Conditionally Free Articles.* For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Chapters 1–97, Harmonized Tariff Schedule of the United States (HTSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (See, §§_10.171–10.178, Customs Regulations) or Chapter 98, HTSUS), the following rules apply:

1. Mitigated Penalty for First Offense

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Chapter 98, HTSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than \$50 (or the domestic value, whichever is less) nor more than \$1,000.

2. Mitigating Factors. When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. Aggravating Factors

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than \$100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than \$100.

4. Commercial Merchandise.

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section B.3. of these guidelines.

C. Other Applicable Rules.

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.
3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.
4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Chapters 1–97, HTSUS, and not the flat rate from Chapter 98, HTSUS.
5. “Duty” means Customs duties and any internal revenue taxes which would have attached upon importation (See section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.
6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.
7. These guidelines are not authority for admitting into the commerce of the United States articles, which are conditionally or absolutely prohibited from entry.
8. The presence of one or more extraordinary aggravating factors, including but not limited to those set forth in section I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.