

RECEIVED

UNITED STATES CLAIMS COURT

NOV 15 1988

WASHINGTON, D.C.

OFFICE OF THE CLERK
U.S. CLAIMS COURT

THOMPSON/CENTER ARMS COMPANY,)
A DIVISION OF THE K.W. THOMPSON)
TOOL COMPANY, INC.)
P.O. Box 5002)
Farmington Road)
Rochester, New Hampshire 03867)

Plaintiff)

v.)

UNITED STATES OF AMERICA)

Defendant)

NO. 652-88 T

COMPLAINT

COMES NOW the plaintiff, Thompson/Center Arms Company, a Division of the K.W. Thompson Tool Company, Inc., and represents to the Court:

1. This is a suit under 26 U.S.C. Section 7422 for recovery of an internal revenue tax erroneously or illegally assessed, collected, and not refunded. The basis of this claim is that a Contender pistol possessed by a person in conjunction with a Contender Carbine Kit, so long as a barrel of less than 16 inches in length is not attached to the receiver and shoulder stock, is not, as a matter of law, a "firearm" in the meaning of 26 U.S.C. Section 5845(a) and thus is not taxable under Chapter 53 of the

Internal Revenue Code.

Parties

2. The plaintiff, Thompson/Center Arms Company, a sporting arms manufacturer and a federal firearms licensee, is a Division of the K.W. Thompson Tool Company, Inc., which is duly incorporated under the laws of New Hampshire with its principal place of business in Rochester, New Hampshire.

3. The defendant is the United States of America.

Jurisdiction

4. Jurisdiction is founded on 28 U.S.C. Section 1491, in that this is a claim against the United States founded upon an Act of Congress.

Facts

5. Thompson/Center Arms Company manufactures a large, single-shot pistol with a 10" barrel and overall length of 14" known as the "Contender," which is designed, intended, and useful solely for hunting, target shooting, and other sporting purposes.

6. The "Contender Carbine Kit" consists of a barrel 21 inches in length, a shoulder stock, and a forend. These parts may be assembled onto the receiver of a Contender pistol (after removal of the pistol barrel, forend and grip) to make a single-shot sporting rifle. The shoulder stock contains a warning not to use with a barrel less than 16" in length. A pistol may be remade by removal of the rifle stock, forend and barrel from the

receiver and reassembly of the pistol grip, forend and barrel onto the receiver.

7. By letter to Plaintiff dated March 17, 1971, Rex D. Davis, Acting Director of the Alcohol, Tobacco and Firearms Division (now known as Bureau of Alcohol, Tobacco and Firearms), U.S. Department of the Treasury, determined that the use of the receiver of the Contender pistol in combination with a shoulder stock and barrel exceeding 16 inches in length to make a rifle does not, as a matter of law, constitute a "firearm" as defined in 26 U.S.C. Section 5845(a). A copy of this letter is attached herewith with the claim for refund, "Exhibit 1."

8. To discourage the making of a taxable firearm as defined in 26 U.S.C. Section 5845(a)(3) and (4), Mr. Davis recommended that a warning be provided to purchasers not to reduce the barrel length of the rifle to less than 16" or the overall length of the rifle to less than 26".

9. In several opinions both before and after the above letter, the Department of the Treasury took the position that similar carbine kits used with pistols are not firearms as defined in 26 U.S.C. Section 5845(a).

10. By letter to Plaintiff dated October 9, 1985, (attached herewith as "Exhibit 2"), Edward T. Stevenson, Deputy Assistant Secretary (Operations), U.S. Department of the Treasury, stated that "a complete pistol and a complete rifle (that is, two

receivers, a short barrel, a long barrel and shoulder stock) do not constitute an NFA weapon unless a short-barreled rifle is actually assembled from the parts." However, Mr. Stevenson also stated that the Contender is a taxable "firearm" under 26 U.S. Section 5845(a) if only one receiver is possessed for use in both pistol and rifle configurations, even though it is not a taxable "firearm" if one possesses two identical but separate receivers, one for a pistol and one for a rifle.

11. On or about October 28, 1987, plaintiff paid \$200.00 to the U.S. Department of the Treasury at the National Firearms Act Branch, Bureau of Alcohol, Tobacco and Firearms (BATF), Washington, D.C. 20226. This payment was submitted with a tax return, ATF Form 1, Application to Make and Register a Firearm, pursuant to 26 U.S.C. Sections 5821, 5822. The name and address of the taxpayer appearing on the tax return is K.W. Thompson Tool Company, Inc., P.O. Box 5002, Rochester, N.H. 03867. The employer's identification number shown on the return is 02-0263490.

12. The above application, after being approved by BATF on December 23, 1987, authorized plaintiff to make a "firearm" as defined in 26 U.S.C. Section 5845(a). However, subsequent thereto and continuing to date, plaintiff did not in fact make a "firearm" as defined, because plaintiff did not assemble a barrel less than 16" in length on a Contender receiver with a shoulder

stock. Instead, plaintiff merely segregated and possessed as a single unit a Contender pistol and carbine kit; used the receiver with a barrel more than 16" in length, a shoulder stock and forend to make a carbine; and then used the receiver again with the pistol grip, forend and 10" barrel to make a pistol again, with an overall length of 14".

13. The steps described in paragraph 12 supra did not constitute the "making" of a "rifle" with a barrel less than 16" in length because no such rifle was "put together . . . or produced" in the meaning of 26 U.S.C. Section 5845(a), (c), and (i). Nor did such steps constitute the making of "a weapon made from a rifle" with overall length of less than 26" or barrel or barrels less than 16" in length, because the term "rifle" as used in 28 U.S.C. Section 5845(a), (c) does not include a mere receiver.

14. Plaintiff filed a claim for refund (attached herewith as "Exhibit 1") of the above tax payment on ATF Form 2635 with the Regional Director (Compliance), BATF, North Atlantic Region, 6 World Trade Center, 6th Floor, New York, New York 10048 on or about March 22, 1988. The name and address of the taxpayer appearing on the claim is K.W. Thompson Tool Company, Inc., P.O. Box 5002, Rochester, N.H. 03867.

15. Plaintiff has not received notification of the disallowance of this claim. More than six months have passed

since the filing of the claim for refund.

16. Plaintiff has exhausted the administrative remedies available to it with the Department of Treasury.

COUNT ONE

17. Paragraphs 1-16 are realleged and incorporated herein by reference.

18. The Contender Pistol and Carbine Kit possessed as a unit, used together, and assembled either as a pistol, or as a rifle with barrel length over 16", do not constitute a "firearm," i.e., a rifle having a barrel or barrels of less than 16 inches in length, as defined in 26 U.S.C. Sections 5845(a)(3) and thus plaintiff is entitled to a refund of the tax.

COUNT TWO

19. Paragraphs 1-16 are realleged and incorporated herein by reference.

20. The Contender Pistol and Carbine Kit possessed as a unit, used and assembled as a pistol with a 10" barrel and overall length of 14" after having been assembled as a rifle, do not constitute a "firearm," i.e., a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length, as defined in 26 U.S.C. Section 5845(a)(4), and thus plaintiff is entitled to a refund of the tax.

COUNT THREE

21. Paragraphs 1-20 are realleged and incorporated herein by reference.

22. The Contender Pistol and Carbine Kit do not otherwise constitute a "firearm" as defined in 26 U.S.C. Section 5845(a).

WHEREFORE, the plaintiff, Thompson/Center Arms Company prays that the Court:

1. Order a refund of the tax erroneously and illegally assessed, collected, and not refunded as aforesaid in the amount of \$200.00;

2. Enter a declaratory judgment that the Contender pistol and Carbine Kit when possessed together as a unit and used in pistol and carbine configurations by a person, as long as a barrel of less than 16 inches in length is not attached to the receiver simultaneously with the shoulder stock, do not constitute a "firearm" as defined in 26 U.S.C. Section 5845(a);

3. Award plaintiff reasonable litigation costs pursuant to 26 U.S.C. Section 7430; and

4. Grant such other and further relief as may be proper.

Respectfully Submitted,

Thompson/Center Arms Company,
A Division of the K.W.
Thompson Tool Company, Inc.,
By Counsel:

Stephen P. Halbrook

Stephen P. Halbrook
Suite B-3
10605 Judicial Drive
Fairfax, Virginia 22030
(703) 385-8610
Counsel for Plaintiff