

§ 48.4121-1

26 CFR Ch. I (4-1-01 Edition)

(iii) the name of the officer by whom the inspection is to be made, (iv) the name of the representative of the officer who has been designated to make the inspection, (v) by specific reference, the law of the State, political subdivision, or the District of Columbia imposing the tax which the officer is charged with collecting or enforcing, and the law under which the officer is so charged, and (vi) the purpose for which the inspection is to be made. The service center director will notify the person making the request upon approval or disapproval of the request.

(3) *Time and place for inspection.* In any case where a request for inspection under this paragraph (b) is approved, the inspection shall be made in the office of the service center director having custody of the records which it is desired to inspect, but only in the presence of an internal revenue officer or employee and during the regular hours of business of the office.

[T.D. 7908, 48 FR 40222, Sept. 6, 1983, as amended by T.D. 8659, 61 FR 10462, Mar. 14, 1996]

Subpart I—Coal

§ 48.4121-1 Imposition and rate of tax on coal.

(a) *Imposition of tax—(1) In general.* Section 4121(a) imposes a tax on coal mined at any time in this country if the coal is sold or used by the producer after March 31, 1978 (see section 4218 and the regulations under that section for rules relating to the use of coal being treated as a sale of coal). For purposes of this section, the term “producer” means the person in whom is vested ownership of the coal under state law immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing (or similarly processing) of coal. However, the excise tax does not apply to a producer who sells the silt waste product without extracting the coal from it, or to the producer

who uses the silt waste product without extracting the coal from it. Furthermore, the excise tax does not apply to the sale or use of the silt waste product after any coal has been extracted from it.

(2) *Examples.* Paragraph (a)(1) of this section may be illustrated by the following examples:

Example (1). A, a limited partnership, is the owner of land on which a coal mine is located. A contracts with XYZ Company to extract the coal for a set price per ton. XYZ Company is an independent contractor and has no ownership interest in the coal mined. Under state law, A is the owner of the coal immediately after severance. After XYZ extracts the coal from the mine, A sells the coal. A is the producer of the coal and is responsible for the payment of the excise tax.

Example (2). A, a limited partnership, is the owner of land on which a coal mine is located. A leases the land to XYZ Company, and XYZ Company extracts coal from the mine and sells it. Under state law, XYZ is the owner of the coal immediately after the coal is severed from the ground. XYZ Company is the producer and must pay the excise tax. This is true even though the lease agreement requires XYZ to pay a royalty to A.

Example (3). XYZ Company purchases a coal waste refuse pile from B and extracts the coal from the waste refuse pile and sells the coal. XYZ is the producer and must pay the excise tax.

Example (4). XYZ Company is a producer of coal and operates its own cleaning plant. After wet washing the coal, it sells the coal and the silt waste product. The sale of the coal is subject to the excise tax whereas the sale of the silt is not.

Example (5). Assume the same facts as in example (4) except that before selling the silt waste product XYZ Company extracts a small quantity of finely sized coal from the silt waste product and then sells both the finely sized coal and the silt waste product. The sale of the finely sized coal is subject to the excise tax whereas the sale of the silt is not.

(b) *Rate of tax—(1) Underground mines; surface mines.* The rate of tax imposed on coal from underground mines located in the United States is the lower of 50 cents per ton (2,000 pounds), or 2 percent of the sale price. The rate of tax imposed on coal from surface mines located in the United States is the lower of 25 cents per ton (2,000 pounds) or 2 percent of the sale price. If a sale or use includes a portion of a ton, the tax is applied proportionately. Thus, if

1,200 pounds of coal from an underground mine are sold for \$35.00, the tax is 30 cents.

(2) *Combination.* If a single mine yields coal from both surface and underground mining, the producer must determine the rate (50 cents or 25 cents per ton) for each ton of coal mined. It is presumed that coal is mined from underground mines (50 cents per ton) unless the producer keeps sufficient records to establish to the satisfaction of the Secretary that the coal was mined from a surface mine.

(c) *Exemptions—(1) Lignite or imported coal.* The excise tax of coal does not apply to lignite or imported coal. Lignite is defined in accordance with the standard specification for classification of coals by rank of the American Society for Testing and Materials (Annual Book of ASTM Standards Part 26, D 388). The procedures specified in D 388 must be followed. If a producer extracts both taxable coal and lignite, then the producer must maintain adequate records to establish the portion of the mineral mined that is exempt from the tax. In determining whether all or a portion of the mineral extracted is lignite, the Service will consider all the facts and circumstances. For example, if a producer sells lignite and coal, the Service will examine all the facts and circumstances, including the contract price, contract specifications, and the amount of lignite extracted as it compares to the amount of lignite sold.

(2) *Other exemptions not applicable.* There are no exemptions for sales for further manufacture, for export, for use as supplies for vessels or aircraft, for the use of a State or local government, or for the use of a nonprofit educational organization. Furthermore, the Secretary does not have discretion to exempt sales of coal for use of the United States from the tax. There is also no exemption from the coal excise tax when the coal is used in further manufacture of another article that is subject to manufacturers excise tax. For example, if a producer of coal converts coal into gasoline which the producer then sells, the producer is liable for the coal excise tax when the coal is converted into gasoline and also liable

for the manufacturers excise tax on gasoline when the gasoline is sold.

(d) *Definitions and special rules—(1) Coal produced from surface mine.* Coal is treated as produced from a surface mine if all of the geological matter (e.g., trees, earth, rock) above the coal is removed before the coal is mined. In addition, both coal mined by auger and coal that is reclaimed from coal waste refuse piles are treated as produced from a surface mine.

(2) *Coal produced from underground mine.* Coal is treated as produced from an underground mine if it is not produced from a surface mine.

(3) *Coal used by the producer.* For purposes of this section, the term “coal used by the producer” means use by the producer in other than a mining process. A mining process is determined the same way it is determined for percentage depletion purposes. For example, a producer who mines coal does not “use” the coal and thereby becomes liable for the tax merely because, before selling the coal, the producer breaks it, cleans it, sizes it, or applies one of the other processes listed in section 613(c)(4)(A) of the Code. In such a case, the producer will be liable for the tax only when he sells the coal. On the other hand, a producer who mines coal does become liable for the tax when he uses the coal as fuel, as an ingredient in making coke, or in another process not treated as “mining” under section 613(c).

(4) *Tonnage sold and sales price.* For purposes of determining both the amount of coal sold by a producer and the sales price of the coal, the point of sale is f.o.b. mine, or f.o.b. cleaning point if the producer cleans the coal before selling it. This is true even if the producer sells the coal on the basis of a delivered price. Accordingly, f.o.b. mine or cleaning point is the point at which the number of tons sold is to be determined for purposes of applying the applicable tonnage rate, and the point at which the sales price is to be determined for purposes of the tax under the 2 percent rate.

(5) *Constructive sale price.* If a producer uses coal mined by the producer in other than a mining process, a constructive sale price must be used in determining the tax under the 2 percent

§ 48.4161(a)

26 CFR Ch. I (4-1-01 Edition)

rate. This constructive price is determined under sections 613(c) and 4218(e) of the Code, and is based on sales of like kind and grade of coal by the producer or other producers made f.o.b. mine (if the coal is used without first being cleaned) or f.o.b. cleaning plant (if the coal is cleaned before it is used). Normally, this constructive price will be the same as the constructive price used in determining the producer's percentage depletion deduction.

[T.D. 7726, 45 FR 66453, Oct. 7, 1980; 45 FR 69214, Oct. 20, 1980; T.D. 8448, 57 FR 48186, Oct. 22, 1992]

Subpart J [Reserved]

Subpart K—Sporting Goods

SOURCE: Sections 48.4161(a)-1 to 48.4161(b)-5 contained in T.D. 7328, 39 FR 36586, Oct. 11, 1974 unless otherwise noted. Sections 48.4181-1 to 48.4182-2 contained in T.D. 6454, 25 FR 1774, Mar. 1, 1960, unless otherwise noted.

§ 48.4161(a) [Reserved]

§ 48.4161(a)-1 Imposition and rate of tax; fishing equipment.

(a) *Imposition of tax.* Section 4161(a) imposes a tax on the sale of the following articles of fishing equipment (including in each case parts or accessories of such articles sold on or in connection therewith or with the sale thereof) by the manufacturer, producer, or importer thereof:

- (1) Fishing rods;
- (2) Fishing creels;
- (3) Fishing reels; and
- (4) Artificial lures, baits, and flies.

The tax applies only to those items of fishing equipment specified in section 4161(a) and this paragraph. Therefore, other items of fishing equipment, such as fishing nets, lines, hooks, sinkers, gaffs, etc., are not subject to the tax. Furthermore, the tax applies only to those specified articles of fishing equipment that are designed or constructed for use in the sport of fishing. Accordingly, the tax does not apply to those articles which, although nominally articles that are specified in section 4161(a), are in the nature of toys or novelties that merely simulate articles of a type referred to in section 4161(a),

and are not designed or constructed for practical use in the sport of fishing.

(b) *Rate of tax.* Tax is imposed on the sale of the articles enumerated in section 4161(a) and paragraph (a) of this section at the rate of 10 percent of the price for which such articles are sold. For the definition of the term "price" see section 4216 and the regulations thereunder.

(c) *Liability for tax.* The tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0-2(a)(4).

[T.D. 7328, 39 FR 36586, Oct. 11, 1974, as amended by T.D. 8043, 50 FR 32014, Aug. 8, 1985]

§ 48.4161(a)-2 Meaning of terms.

(a) *Fishing rods.* The term "fishing rods" includes all articles, however, designated, that are designed or constructed for use in conjunction with a fishing reel for casting a line and hook in the sport of fishing. The term does not include any article that is neither designed for use in casting, nor suitable for such use. A so-called fishing rod "blank" is not considered to be a "fishing rod" unless the blank contains an affixed handle and reel seat, or is sold in the form of a kit that contains a rod blank, a handle, and a reel seat.

(b) *Fishing creels.* The term "fishing creels" includes all portable containers, of whatever material made, that are designed for storing and carrying fish from the time they are caught until such time as they are removed from the container for consumption or preservation. The term does not include any article primarily designed for use in the commercial fishing industry, or an article such as a collapsible wire basket designed to be hung over the side of a boat to keep fish captive and alive in the water.

(c) *Fishing reels.* The term "fishing reels" includes all mechanical and electrical devices that contain a spool for dispensing and recovering fishing line, and are designed for use with fishing rods in casting and in reeling in hooked fish in the sport of fishing. The term also includes reels designed for use with bows, in the sport of bowfishing.