

§ 48.4216(b)-4

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

1962, of all articles subject to tax under Chapter 32.

[T.D. 7613, 44 FR 23825, Apr. 23, 1979]

§ 48.4216(b)-4 Constructive sale price; affiliated corporations.

(a) *In general.* Sections 4216(b) (3), (4), and (5) establish procedures for determining a constructive sale price under section 4216(b)(1)(C) for sales between corporations that are members of the same "affiliated group", as that term is defined in section 1504(a).

(b) *Sales to which section 4216(b)(3) applies.* Section 4216(b)(3), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where:

(1) A manufacturer, producer or importer regularly sells a taxable article (other than an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.)) to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer or importer, and

(2) The wholesale distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors.

Under such circumstances the constructive sale price for the article shall be an amount equal to 90 percent of the lowest price for which the distributor regularly sells the article in arm's-length transactions to such independent retailers. Once the constructive sale price has been determined, no adjustment shall be made for sections 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments. If both section 4216(b)(3) and section 4216(b)(4) apply with respect to the sale of an article, the constructive sale price for such article shall be the lower of the prices computed under section 4216(b)(3) and section 4216(b)(4).

(c) *Sales to which section 4216(b)(4) applies.* Section 4216(b)(4), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where:

(1) A manufacturer, producer, or importer regularly sells (except for tax-free sales) a taxable article only to a wholesale distributor which is a mem-

ber of the same affiliated group as the manufacturer, producer, or importer,

(2) The distributor regularly sells (except for tax-free sales) such article only to retail dealers, and

(3) The normal method of sales for such articles within the industry is to sell such articles in arm's-length transactions to wholesale distributors.

Section 4216(b)(4) applies with respect to articles taxable under section 4061(a) (relating to trucks, buses, etc.) only as to sales after December 31, 1969, and before January 1, 1971. Under section 4216(b)(4), the constructive sale price of such article shall be the median price at which the distributor, at the time of the sale by the manufacturer, resells the article to retail dealers, reduced by a percentage of such price equal to the percentage which:

(i) The difference between the median price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers of producers thereof, and the median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of

(ii) The median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers.

For purposes of this paragraph, the "median price" for which an article is sold at a particular level of distribution is the price midway between the highest and lowest prices charged vendees at the particular level of distribution. Where only one price is charged at a level of distribution, "median price" is equivalent to "actual price". All sale prices referred to in paragraphs (b), (c), (d), and (e) of this section are prices that must reflect the inclusions and exclusions set forth in sections 4216(a) and (f). However, once a constructive sale price has been determined under these paragraphs, no further adjustment of such price is allowed.

(d) *Application of section 4216(b)(4).* The application of section 4216(b)(4) and paragraph (c) of this section may be illustrated by the following example:

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Example. *M*, a corporation engaged in the manufacture of article *X*, sold 100 of such articles at \$10.00 per article to a wholesale distributor *N*, a corporation engaged in the business of selling *X* articles to independent retail dealers. *N* is a member of the same affiliated group of corporations as *M*. *M* sells *X* articles only to *N*. The normal method of manufacturers' sales of *X* articles in the industry is to sell to independent wholesale distributors. *N* corporation sells *X* articles to

retailers for \$15.00 each. The price for which comparable *X* articles are sold to wholesale distributors in the ordinary course of trade by manufacturers thereof is \$12.00 per article. Wholesale distributors sell *X* articles to retailers in the ordinary course of trade for \$16.00 per article. Under the foregoing facts the constructive sale price determined under section 4216(b)(4) and this paragraph is \$11.25, computed as follows:

$$\text{constructive sale price} = \$15.00 - \left(\$15.00 \times \frac{\$16.00 - \$12.00}{\$16.00} \right) = \$11.25$$

(e) *Sales to which section 4216(b)(5) applies.* Section 4216(b)(5), which applies to articles sold after December 31, 1970, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those circumstances where:

(1) A manufacturer, producer, or importer of an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.) regularly sells such article to a wholesale distributor that is a member of the same affiliated group of corporations as the manufacturer, producer, or importer, and

(2) Such distributor regularly sells such articles to independent retail dealers.

Under such circumstances the constructive sale price of such articles shall be 98½ percent of the lowest price for which such distributor regularly sells the article in arms's-length transactions to the independent retail dealers. Once the constructive sale price has been determined, no adjustment shall be made for section 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments.

(f) *Determination of "lowest price".* (1) In addition to other considerations, in determining a "lowest price" for purposes of section 4216(b) (1), (3), and (5) and § 48.4216(b)-4(b), and 48.4216(b)-4(e), such price shall be determined:

(i) Without requiring that a given percentage of sales be made at that price (provided that the volume of sales made at that price is great enough to indicate that those sales

have not been engaged in primarily to establish a lower tax base), and

(ii) Without including any charge for a fixed amount that the purchaser has an unconditional right to recover on the basis of a contractual arrangement existing at the time of sale.

(2) For purposes of applying section 4216(b)(1) and § 48.4216(b)-2, section 4216(b)(6) and this paragraph apply to articles sold after June 30, 1962. For purposes of applying section 4216(b)(3) and paragraph (b) of this section, section 4216(b)(6) and this paragraph apply to articles sold after December 31, 1969. For purposes of applying section 4216(b)(5) and paragraph (e) of this section, section 4216(b)(6) and this paragraph apply to articles sold after December 31, 1970.

(g) *Definitions.* For purposes of this section and paragraphs (3), (4), and (5) of section 4216(b), the term "regularly sells" has the same meaning as that accorded the term "regular sales" in subparagraph (3) of § 48.4216(b)-3(b), and the term "normal method of sales in the industry" has the same meaning as accorded that term in subparagraph (4) of § 48.4216(b)-3(b).

[T.D. 7613, 44 FR 23826, Apr. 23, 1979; 44 FR 47767, Aug. 15, 1979]

§ 48.4216(c)-1 Computation of tax on leases and installment sales.

(a) *Leases.* When a taxable article is leased by a manufacturer, producer, or importer, liability for tax is incurred, except as provided by section 4217(b) and § 48.4217-2, on each payment made