

§ 48.4218-2

the manufacturer, producer, or importer thereof, the tax attaches at the time such use begins. If tax applies by reason of the sale of an article by the manufacturer, producer, or importer thereof on or in connection with his sale of another article, the tax attaches at the time of the sale of such other article.

(h) *Exemptions because of other statutory provisions.* Tax does not apply on the use of an article by the manufacturer, producer, or importer thereof if under the applicable provisions of the Code the sale of the article for a similar use would not be subject to tax. For example, the use of gasoline by the producer thereof to propel tankers engaged in foreign trade which are owned or leased by the producer would not be subject to tax under section 4218 since a sale for such use would be exempt from tax as provided in section 4221(a)(3). Also, tax need not be paid with respect to the use of an article by the manufacturer, producer, or importer thereof if such use would qualify, under the provisions of section 6416(b), for credit or refund of the tax paid.

[T.D. 6687, 28 FR 11780, Nov. 5, 1963]

§ 48.4218-2 Business or personal use of articles.

(a) *Business use.* Section 4218 applies to the use by a person, in the operation of any business in which he is engaged, of a taxable article which has been manufactured, produced, or imported by him or his agent. For example, a person engaged in the operation of a dairy business incurs liability for tax with respect to a truck body manufactured by him and used in the operation of his dairy business.

(b) *Personal use.* The tax on use of a taxable article does not attach in cases where an individual incidentally manufactures, produces, or imports a taxable article for his personal use or causes a taxable article to be manufactured, produced, or imported for his personal use.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963]

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§ 48.4218-3 Events subsequent to taxable use of article.

Liability for tax incurred on the use of an article is not extinguished or reduced because of any subsequent sale or lease of the article even if such sale or lease would have been exempt if the article had been so sold or leased prior to use. If a manufacturer, producer, or importer of an article incurs liability for tax on his use thereof, and thereafter sells or leases the article in a transaction which otherwise would be subject to tax, liability for tax is not incurred on such sale or lease.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963]

§ 48.4218-4 Use in further manufacture.

For purposes of section 4218 and § 48.4218-1, an article is used as material in the manufacture or production of, or as a component part of, another article, if it is incorporated in, or is a part or accessory of, the other article. Lubricating oil in the crankcase of a new truck is an example of a taxable article use as material in the manufacture or production of, or as a component part of, another article. In addition, an article (other than gasoline used as a fuel) is considered to be used as material in the manufacture of another article if it is partly or entirely consumed in testing such other article; for example, shells or cartridges used in testing new firearms. Similarly, if an article is partly or wholly consumed in quality testing a production run of like articles (as, for example, an automotive part destroyed in stress testing) such article is also considered to have been used as material in the manufacture of another article. However, if a taxable article that has been used tax free and only partly consumed in testing is later sold, or put to a taxable use, by the manufacturer, tax attaches to such sale or use. An article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not used as material in the manufacture or production of, or as a component part of, such other article. Thus, lubricating oil consumed in operating plant machinery in the

course of the manufacture of automobile truck chassis is not used as material in the manufacture or production of, or as a component part of, the truck chassis.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963, as amended by T.D. 7536, 43 FR 13521, Mar. 31, 1978]

§ 48.4218-5 Computation of tax.

(a) *Tax based on price.* Except as provided in paragraph (d) of this section, tax liability incurred on the use of an article shall be computed on the price at which such or similar articles are sold in the ordinary course of trade by manufacturers, producers, or importers thereof and in the absence of special arrangements. For additional provisions applicable in computing the tax in the case of the use of an article by a manufacturer and producer who purchased the article free of tax under section 4221(a)(1) for use by him in further manufacture, see section 423(b) and the regulations thereunder.

(b) *Articles regularly sold by manufacturer.* If the manufacturer, producer, or importer of an article regularly sells such articles at wholesale in arm's length transactions, tax liability on his use of any such article shall be computed on his lowest established wholesale price for such articles in effect at the time of the taxable use. In establishing such price, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a), 4216(f), and 6416(b)(1), as in effect at the time tax liability on the use of the article is incurred, and the regulations thereunder contained in this subpart and Subpart O. If the manufacturer, producer, or importer of an article does not regularly sell such articles at wholesale in arm's length transactions, a constructive price on which the use tax shall be computed will be determined by the Commissioner. This price will be established after considering the selling practices and price structures of manufacturers, producers, and importers of similar articles.

(c) *Articles governed by section 4218(a) used in manufacture of nontaxable combination articles.* If the manufacturer, producer, or importer of an article to which section 4218(a) applies does not regularly sell such article separately

but uses it as material in the manufacture or production of, or as a component part of, a nontaxable combination article consisting of a taxable and nontaxable article, liability for tax on his use shall be computed on the constructive price of the taxable article at the time of use. To determine the constructive price of the taxable article in such case, the combination article is considered to be composed of (1) parts used exclusively in the functioning of the taxable article in the combination, (2) parts used exclusively in the functioning of the nontaxable article in the combination, and (3) parts, called common parts, which serve a dual function in connection with the parts in both subparagraphs (1) and (2) of this paragraph. The ratio which the cost of the parts in subparagraph (1) of this paragraph bears to the sum of the cost of such parts and the parts in subparagraph (2) of this paragraph is applied to the lowest established wholesale price for which like combination articles are at the time of the taxable use being sold by the manufacturer or producer in the ordinary course of trade. The resulting amount is the constructive sale price for the taxable article on which tax is to be computed. The cost of the common parts is allocable to the parts in subparagraphs (1) and (2) of this paragraph in the same ratio, and, therefore, need not be taken into account in the computation since the inclusion and allocation of the cost of such parts in the determination would not result in a different ratio. In determining the lowest established wholesale price for the combination article, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a), 4216(f), and 6416(b)(1), as in effect at the time tax liability on the use of the taxable article is incurred, and the regulations thereunder contained in this subpart and Subpart O of this part. The tax applicable to the use of the article for which a constructive sale price has been computed is not affected by any charges or readjustments of the price for which the nontaxable combination article is sold, whether by reason of the