

§ 48.4161(b)-4 Tax-free sales.

For provisions relating to tax-free sales of articles referred to in section 4161(b) see:

(a) Section 4221, relating to certain tax-free sales;

(b) Section 4222, relating to registration;

(c) Section 4223, pertaining to special rules relating to further manufacture; and

(d) Section 4225, relating to exemption of articles manufactured or produced by Indians;

and the regulations thereunder.

§ 48.4161(b)-5 Effective date.

The taxes imposed by section 4161(b) are effective with respect to sales made on and after January 1, 1975.

Subpart L [Reserved]**Subpart M—Special Provisions Applicable to Manufacturers Taxes****§ 48.4216(a)-1 Charges to be included in sale price.**

(a) *In general.* The “price” for which an article is sold includes the total consideration paid for the article, whether that consideration is in the form of money, services, or other things. See § 48.0-2 (a) (5). However, for purposes of the taxes imposed under Chapter 32 certain collateral charges made in connection with the sale of a taxable article must be included in the taxable sale price, whereas others may be excluded. Any charge which is required by a manufacturer, producer, or importer to be paid as a condition of its sale of a taxable article and which is not attributable to an expense falling within one of the exclusions provided in section 4216 or the regulations thereunder is includible in the taxable sale price. It is immaterial for this purpose that the charge may be paid to a person other than the manufacturer, producer, or importer, or that it may be separately billed to the purchaser as a charge earmarked for expenses incurred or to be incurred in his behalf, such as charges for demonstration or display of the article, for sales pro-

motion programs, or otherwise. With respect to the rules relating to exclusion (in the case of sales after December 31, 1960) of charges for local advertising of a manufacturer’s products, see section 4216(e) and § 48.4216(e)-1. In the case of sales on credit, a carrying, finance, or service charge is excludable from the sale price if it is reasonably related to the costs of carrying the deferred portion of the sale price (such as interest on the deferred portion of the sale price, expenses of bookkeeping necessary to keep the records of such sales, and expenses of correspondence and other communication in connection with collection).

(b) *Tools and dies.* Separate charges for tools and dies used in the manufacture or production of a taxable article are to be included, in whole or in part, in the sale price on which the tax is based. It is immaterial whether the charges for such items are billed in a lump sum or are amortized or allocated to each of the taxable articles. If, at the termination of a contract to manufacture taxable articles, the tools and dies used in production pass to the purchaser, only the amount of depreciation of the tools and dies incurred in production, computed on a “production output” basis, should be included in the sale price. If the purchaser furnishes the tools and dies, the amount of the cost thereof, to the extent that such cost has been depreciated in the production of the taxable articles (computed on a “production output” basis), shall be included in determining the sale price of the articles for purposes of computing the tax. This paragraph applies to sales by manufacturers after May 5, 1974.

(c) *Charges for warranty.* A charge for a warranty of an article which the manufacturer, producer, or importer requires the purchaser to pay in order to obtain the article shall be included in the sale price of the article on which the tax is computed. On the other hand, a charge for a warranty of a taxable article paid at the purchaser’s option shall not be included in the sale price for purposes of computing tax thereon.

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(d) *Charges for coverings, containers, and packing.* Any charge by the manufacturer, producer, or importer for coverings and containers of whatever nature used to pack an article for shipment shall be included as part of the sale price for the purpose of computing the tax, whether or not the charges are identified as such on the invoice or are billed separately. Even though there is an agreement that the manufacturer, producer, or importer will repay all or a portion of the charge for the coverings or containers upon the return thereof, the full charge nevertheless shall be included in the sale price. It is immaterial whether the charge made at the time of sale is more or less than the actual value of the covering or container. See paragraph (b)(4) of § 48.6416(b)-1 for provisions relating to the claiming of a credit or refund in the case of a price readjustment due to the return or repossession of a covering or container. Packing charges are to be included in the sale price whether the charges cover normal packing or special packing services, such as for extra protection of the article or for odd-lot quantities. This rule shall apply whether the packing services are initiated by the manufacturer, producer, or importer or are furnished at the request of the purchaser and whether the packing is performed by the manufacturer, producer, or importer or by another person at his request. If the purchaser supplies packing materials, the fair market value of such materials must be included in the tax base when computing tax liability on the sale of the article.

(e) *Taxable and nontaxable articles sold as a unit.* Where a taxable article and a nontaxable article are sold by the manufacturer as a unit, the tax attaches to that portion of the manufacturer's sale price of the unit which is properly allocable to the taxable article. For example, where a fishing reel (an article subject to tax under section 4161(a)) is equipped with a fishing line (a nontaxable article) and the reel and line are sold as a unit, the tax imposed by section 4161(a) applies only to that portion of the manufacturer's sale price of the unit which is properly allocable to the fishing reel. Normally, the taxable portion of such a unit may be deter-

mined by applying to the manufacturer's sale price of the unit the ratio which the manufacturer's separate sale price of the taxable article bears to the sum of the sale prices of both the taxable and nontaxable articles, if such articles are sold separately by the manufacturer. Where the articles (or either one of them) are not sold separately by the manufacturer and do not have established sale prices, the taxable portion is to be determined from a comparison of the actual costs of the articles to the manufacturer. Thus, if the cost of the taxable article represents four-fifths of the total cost of the complete unit, the tax applies to four-fifths of the price charged by the manufacturer for the unit.

[T.D. 7536, 43 FR 13517, Mar. 31, 1978]

§ 48.4216(a)-2 Exclusions from sale price.

(a) *Tax—(1) Tax not part of taxable sale price.* The tax imposed by Chapter 32 of the Code on the sale of an article is not part of the taxable sale price of the article. Thus, if a manufacturer computes the tax on a sale price which is determined without regard to the tax, and it charges the proper tax as a separate item, the amount of tax so charged does not become a part of the taxable sale price and no tax is due on the tax so charged. Where no separate charge is made as tax, it will be presumed that the price charged to the purchaser for the article includes the proper tax, and the proper percentage of such price will be allocated to the tax.

(2) *Computation of tax.* If an article subject to tax at the rate of 10 percent is sold for \$100 and an additional item of \$10 is billed as tax, \$100 is the taxable selling price and \$10 is the amount of tax due thereon. However, if the article is sold for \$100 with no separate billing or indication of the amount of the tax, it will be presumed that the tax is included in the \$100, and a computation will be necessary to determine what portion of the total amount represents the sale price of the article and what portion represents the tax. The computation is as follows:

Taxable sale price = sale price including tax/100+rate of tax.