

§ 48.4216(b)-1 Constructive sale price; scope and application.

(a) *In general.* Section 4216(b) pertains to those taxes imposed under Chapter 32 that are based on the price for which an article is sold, and contains the provisions for constructing a tax base other than the actual sale price of the article, under certain defined conditions.

(b) *Specific applications.* (1) Section 4216(b)(1) applies to:

(i) Arm's-length sales at retail or on consignment, other than those sales at retail and to retailers to which section 4216(b)(2) and § 48.4216(b)-3 apply; and

(ii) Sales otherwise than at arm's length, and at less than fair market price.

(2) Section 4216(b)(2) applies generally to arm's-length sales of an article at retail or to retailers, or both, where the manufacturer also sells the same article to wholesale distributors.

(3) Section 4216(b)(3) provides a formula for determining a constructive sale price for sales of taxable articles between members of an affiliated group of corporations (as "affiliated group" is defined in section 1504(a)) in those instances where the purchasing corporation regularly resells to retailers but does not regularly resell to wholesale distributors, and except for situations where section 4216(b)(4) or (5) applies.

(4) Section 4216(b)(4) provides a special method for computing a constructive sale price for sales of taxable articles between affiliated corporations where the purchasing corporation sells only to retailers, and the normal method of selling within the industry is for manufacturers to sell to wholesale distributors.

(5) Section 4216(b)(5) provides a special method for computing a constructive sale price for sales of articles subject to a tax imposed by section 4061(a) (trucks, buses, tractors, etc.) between affiliated corporations, where the purchasing corporation regularly sells such articles in arm's-length transactions to independent retailers.

(c) *Definitions.* For purposes of section 4216(b) and the regulations thereunder and unless otherwise indicated:

(1) *Sale at retail.* A "sale at retail," or a "retail sale", is a sale of an article to a purchaser who intends to use or lease

the article rather than resell it. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as "sales at retail" if the purchaser is not engaged in the business of reselling such articles, and acquires them for the purpose of using them rather than reselling them.

(2) *Retail dealers.* A "retail dealer", or "retailer", is a person engaged in the business of selling articles at retail.

(3) *Wholesale distributor.* The term "wholesale distributor" means a person engaged in the business of selling articles to persons engaged in the business of reselling such articles.

[T.D. 7613, 44 FR 23824, Apr. 23, 1979]

§ 48.4216(b)-2 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under Chapter 32 on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is (1) sold at retail, (2) sold while on consignment, or (3) sold otherwise than through an arm's-length transaction at less than fair market price. See § 48.4216(b)-2 (c) for the treatment of articles taxable under section 4061(a).

(b) *Sales at retail.* Section 4216(b)(1)(A) relates to the determination of a constructive sale price for sales of taxable articles sold at arm's length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. If the constructive sale price is less than the actual sale price, the constructive sale price shall be used as the tax base. If the constructive sale price is not less than the actual sale price, the actual sale price shall be considered as not less than fair market, and shall be used as the tax base. In determining the highest price for which articles are sold by manufacturers to wholesale distributors, there must be taken into consideration the normal industry practices with respect to section 4216 (a) and (f) inclusions and