

§ 48.6416(b)(1)-1

government for the exclusive use of a State or local government or used or sold for use as supplies for vessels or aircraft, the term "ultimate vendor", as used in paragraph (b)(2) of this section, means the ultimate vendor of the second article.

(c) *Overpayments not included.* This section does not apply to any overpayment determined under section 6416(b)(1) (relating to price readjustments), section 6416(b)(3)(A) (relating to certain cases in which refund or credit is allowable to the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer taxpayer), section 6416(b)(3)(B) prior to April 1, 1983 (relating to parts or accessories taxable under section 4061(b) and used by a subsequent manufacturer or producer as material or a component part of any other article manufactured or produced by him), section 6416(b)(4) after March 31, 1983 (relating to tires), section 6416(b)(5) (relating to the return to the seller of certain installment accounts which the seller had previously sold) or section 6416(b)(6) (relating to truck chassis, bodies, and semi-trailers used for further manufacture). In this regard, see §§ 48.6416(b)(1)-1, 48.6416(b)(3)-1, and 48.6416(b)(5)-1.

[T.D. 8043, 50 FR 32023, Aug. 8, 1985, as amended by T.D. 8748, 63 FR 15292, Mar. 31, 1998]

§ 48.6416(b)(1)-1 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) and § 48.6416(b)(1)-2 or § 48.6416(b)(1)-3, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either (a) on the price as so readjusted or (b) on the original sale price and a credit or refund claimed in re-

spect of the price readjustment. A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402-2 of this chapter (Regulations on Procedure and Administration), § 48.6416(a)-3(a)(2), and § 48.6416(b)(1)-4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)-1.

[T.D. 8043, 50 FR 32024, Aug. 8, 1985]

§ 48.6416(b)(1)-2 Determination of price readjustments.

(a) *In general*—(1) *Rules of usual application*—(i) *Amount treated as overpayment.* If the tax imposed by chapter 32 has been paid and thereafter the price of the article on which the tax was based is readjusted, that part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. A readjustment of price to the purchaser may occur by reason of—

- (A) The return of the article,
- (B) The repossession of the article,
- (C) The return or repossession of the covering or container of the article, or
- (D) A bona fide discount, rebate, or allowance against the price at which the article was sold.

(ii) *Requirements of price readjustment.* A price readjustment will not be deemed to have been made unless the person who paid the tax either—

- (A) Repays part or all of the purchase price in cash to the vendee,
- (B) Credits the vendee's account for part or all of the purchase price, or
- (C) Directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

In addition, to be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the payment or credit purports to adjust. Thus, commissions or bonuses paid to a

manufacturer's own agents or salesperson for selling the manufacturer's taxable products are not price readjustments for purposes of this section, since those commissions or bonuses are not paid or credited either to the manufacturer's vendee or to a third party for the vendee's benefit. On the other hand, a bonus paid by the manufacturer to a dealer's salesperson for negotiating the sale of a taxable article previously sold to the dealer by the manufacturer is considered to be a readjustment of the price on the original sale of the taxable article, regardless of whether the payment to the salesperson is made directly by the manufacturer or to the salesperson through the dealer. In such a case, the payment is related to the sale of a taxable article and is made for the benefit of the dealer because it is made to the dealer's salesperson to encourage the sale of a product owned by the dealer. Similarly, payments or credits made by a manufacturer to a vendee as reimbursement of interest expense incurred by the vendee in connection with a so-called "free flooring" arrangement for the purchase of taxable articles is a price readjustment, regardless of whether the payment or credit is made directly to the vendee or to the vendee's creditor on behalf of the vendee.

(iii) *Limitation on credit or refund.* The credit or refund allowable by reason of a price readjustment in respect of the sale of a taxable article may not exceed an amount which bears the same ratio to the total tax originally due and payable on the article as the amount of the tax-included readjustment bears to the original tax-included sale price of the article.

Example. A manufacturer sells a taxable article for \$100 plus \$10 excise tax, and reports and pays tax liability accordingly. There-

after, the manufacturer credits the customer's account for \$11 (tax included) in readjustment of the original sale price. The overpayment of tax is \$1, determined as follows:

Tax-included readjustment ×
Tax-included sale price
Original tax due =
Tax overpayment.
\$11 × \$10 =
\$1 tax overpaid.
\$110

(2) *Rules of special application—(i) Constructive sale price.*— If, in the case of a taxable sale, the tax imposed by chapter 32 is based on a constructive sale price determined under any paragraph of section 4216(b) and the regulations thereunder, as determined without reference to section 4218, then any price readjustment made with respect to the sale may be taken into account under this section only to the extent that the price readjustment reduces the actual sale price of the article below the constructive sale price.

Example. (A) A manufacturer sells a taxable article at retail for \$110 tax included. Under section 4216(b)(1) the constructive sale price (tax included) of the article is determined to be \$93. Thereafter, the manufacturer grants an allowance of \$10 to the purchaser, which reduces the actual selling price (tax included) to \$100. Since the readjustment price still exceeds the amounts of the constructive sale price, this readjustment is not recognized as a price readjustment under this section.

(B) Subsequently, the manufacturer extends to the purchaser an additional price allowance of \$10, thereby reducing the actual sale price to \$90. Since the actual sale price is now \$3 less than the constructive sale price of \$93, the manufacturer has overpaid by the amount of tax attributable to the \$3. Assuming the tax rate involved is 10 percent, and the prices involved are tax-included, the overpayment of tax would be \$0.27, determined as follows:

$$\frac{\text{percentage tax rate}}{100 \text{ plus percentage tax rate}} \times \text{tax-included readjustment} = \text{tax overpayment} \left(\frac{10}{100} \times \$3 = \$0.27 \right)$$

(ii) *Price determined under section 4223(b)(2).* If a manufacturer (within the meaning of section 4223(a)) to whom an article is sold or resold free of tax in

accordance with the provisions of section 4221(a)(1) for use in further manufacture diverts the article to a taxable use or sells it in a taxable sale, and

pursuant to the provisions of section 4223(b)(2) computes the tax liability in respect of the use or sale on the price for which the article was sold to the manufacturer or on the price at which the article was sold by the actual manufacturer, a reduction of the price on which the tax was based does not result in an overpayment within the meaning of section 6416(b)(1) of this section. Moreover, if a manufacturer purchases an article tax free and computes the tax in respect of a subsequent sale of the article pursuant to the provisions of section 4223(b)(2), an overpayment does not arise by reason of readjustment of the price for which the article was sold by the manufacturer except where the readjustment results from the return or repossession of the article by the manufacturer, and all of the purchase price is refunded by the manufacturer. See, however, paragraph (b)(4) of this section as to repurchased articles.

(b) *Return of an article*—(1) *Price readjustment*. If a taxable article is returned to the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, a price readjustment giving rise to an overpayment results—

(i) If the article is returned before use, and all of the purchase price is repaid to the vendee or credited to the vendee's account, or

(ii) If the article is returned under an express or implied warranty as to quality or service, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, or

(iii) If title is still in the seller, as, for example, in the case of certain installment sales contracts, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account.

(2) *Return of purchase price*. For purposes of paragraph (b)(1) of this section, if all of the purchase price of an article has been returned to the vendee, except for an amount retained by the manufacturer pursuant to contract as reimbursement of expense incurred in connection with the sale (such as a handling or restocking charge), all of the purchase price is considered to have been returned to the vendee.

(3) *Taxability of subsequent sale or use*. If, under any of the conditions de-

scribed in paragraph (b)(1) of this section, an article is returned to the manufacturer who paid the tax and all of the purchase price is returned to the vendee, the sale is considered to have been rescinded. Any subsequent sale or use of the article by the manufacturer will be considered to be an original sale or use of the article by the manufacturer which is subject to tax under chapter 32 unless otherwise exempt. If under any such condition an article is returned to the manufacturer who paid the tax and only part of the purchase price is returned to the vendee, a subsequent sale of the article by the manufacturer will be subject to tax to the extent that the sale price exceeds the adjusted sale price of the first taxable sale.

(4) *Treatment of other transactions as repurchases*. Except as provided in paragraph (b)(1) of this section, a price readjustment will not result when a taxable article is returned to the manufacturer who paid the tax on the sale of the article, even though all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, since such a transaction will be considered to be a repurchase of the article by the manufacturer.

(c) *Repossession of an article*. If a taxable article is repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, a price readjustment giving rise to an overpayment will result. However, if the manufacturer later resells the repossessed article for a price in excess of the original adjusted sale price, the manufacturer will be liable for tax under chapter 32 to the extent that the resale price exceeds the original adjusted sale price.

(d) *Return or repossession of covering or container*. If the covering or container of a taxable article is returned to, or repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a portion of the purchase price is repaid to the vendee or credited to the vendee's account by reason of the return or repossession of the covering or container, a price adjustment giving rise to an overpayment will result. If a taxable

article is considered to have been repurchased, as provided in paragraph (b)(4) of this section, and the covering or container accompanies the taxable article as part of the transaction, the covering or container will also be considered to have been repurchased.

(e) *Bona fide discounts, rebates, or allowances*—(1) *In general.* Except as provided in § 48.6416(b)(1)-3 (relating to readjustments in respect of local advertising), the basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the price actually paid by, or charged against, the purchaser has in fact been reduced by subsequent transactions between the parties. Generally, the price will be considered to have been readjusted by reason of a bona fide discount, rebate, or allowance, only if the manufacturer who made the taxable sale repays a part of the purchase price in cash to the vendee, or credits the vendee's account, or directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee, in consideration of factors which, if taken into account at the time of the original transaction, would have resulted at that time in a lower sale price. For example, a price readjustment will be considered to have been made when a bona fide discount, rebate, or allowance is given in consideration of such factors as prompt payment, quantity buying over a specified period, the vendee's inventory of an article when new models are introduced, or a general price reduction affecting articles held in stock by the vendee as of a certain date. On the other hand, repayments made to the vendee do not effectuate price readjustments if given in consideration of circumstances under which the vendee has incurred, or is required to incur, an expense which, if treated as a separate item in the original transaction, would have been includible in the price of the article for purposes of computing the tax.

Examples. The provisions of paragraph (e)(1) of this section may be illustrated by the following examples:

Example (1). B, a manufacturer of fishing rods, bills its distributors in a specified amount per fishing rod purchased by them.

Thereafter, B issues to each distributor a credit memorandum in the amount of X dollars for each demonstration by the distributor of the fishing rods at a sporting goods exhibition. The credit which B allows the distributor for demonstration of B's product does not effect a readjustment of price.

Example (2). C, a manufacturer of automobiles, bills its dealers in a specified amount per automobile purchased by them. Thereafter, C remits to the dealer X dollars of the original sale price for each automobile sold by the dealer in the last month of the model year. An additional amount of Y dollars is paid to the dealer upon a showing by the dealer that the dealer has paid Y dollars to the salesperson who made the sale. In this case, the X dollars paid to the dealer by C constitutes a bona fide discount, rebate, or allowance since payment of such amount is in the nature of a price reduction by reason of the dealer's inventory when new models are introduced. In addition, the Y dollars paid to the dealer in reimbursement for the amount paid by the dealer to the salesperson who made the sale, also constitutes a bona fide discount, rebate, or allowance.

(2) *Inability to collect price.* A charge-off of an amount outstanding in an open account, due to inability to collect, is not a bona fide discount, rebate, or allowance and does not, in and of itself, give rise to a price readjustment within the meaning of this section.

(3) *Loss or damage in transit.* If title to an article has passed to the vendee, the subsequent loss, damage, or destruction of the article while in the possession of a carrier for delivery to the vendee does not, in and of itself, affect the price at which the article was sold. However, if the article was sold under a contract providing that, if the article was lost, damaged, or destroyed in transit, title would revert to the vendor and the vendor would reimburse the vendee in full for the sale price, then the original sale is considered to have been rescinded. The vendor is entitled to credit or refund of the tax paid upon reimbursement of the full tax-included sale price to the vendee.

[T.D. 8043, 50 FR 32024, Aug. 8, 1985; 50 FR 42518, Oct. 21, 1985]

§ 48.6416(b)(1)-3 Readjustment for local advertising charges.

(a) *In general.* If a manufacturer has paid the tax imposed by chapter 32 on the price of any article sold by the manufacturer and thereafter has repaid