

Internal Revenue Service, Treasury

§ 48.4216(c)-1

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:

constructive sale price = \$15.00 - ( \$15.00 x ( \$16.00 - \$12.00 / \$16.00 ) ) = \$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

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with respect to such lease. Tax is payable on each lease payment as long as the article is leased by the manufacturer, producer, or importer. The tax payable with respect to each lease payment is a percentage of each payment based on the rate of tax, if any, in effect on the date the lease payment is due. If the article is subsequently sold by the manufacturer, producer, or importer, the tax applies also to such sale, without regard to the tax paid when the article was leased. For definition of the term "lease", see paragraph (a) of § 48.4217-1(a).

(b) *Installment sales.* When a taxable article is sold under an installment payment contract with title reserved in the seller, or under a conditional sale contract, chattel mortgage arrangement or other arrangement creating a security interest with payments to be made in installments, tax shall be computed and paid on each payment made by the purchaser. The tax payable with each payment is a percentage of each payment based on the rate of tax, if any, in effect on the date the payment is due. The part of each payment that is subject to tax is that portion of the payment equal to the percentage of the total charge for the article that is subject to tax. For example, if the total charge for the article is \$1,000, and of the total amount charged only 90 percent thereof, or \$900, is subject to tax by reason of exclusions, then only 90 percent of the installment payment is subject to tax. If the tax base is a constructive sale price computed under section 4216(b) that is less than the actual sale price of the article, the portion of each payment subject to tax is the percentage of such payment equal to the percentage that the constructive sale price bears to the actual sale price. For example, if an article is sold at retail for \$100, and the constructive sale price for such an article computed under the provisions of section 4216(b)(1)(A) is \$75, the percentage which the constructive sale price bears to the actual sale price is 75 percent. Accordingly, only 75 percent of each installment payment is subject to tax.

(c) *Sales on credit.* Where articles are sold on credit under conditions other than those specified in paragraph (b) of

this section, the entire tax shall be reported and paid with the return covering the period in which the sale is made, even though the price may not be paid to the manufacturer, producer, or importer until a later date, or not paid at all.

(d) *Effective dates of paragraphs (a) and (b) of this section.* The rules set forth in paragraphs (a) and (b) of this section are effective as of June 22, 1965. As in effect before June 22, 1965, section 4216(c) required, in the case of a transaction described in section 4216(c) (1), (2), (3), or (4), that there be paid upon each payment with respect to an article that portion of the total tax which was proportionate to the portion of the total amount to be paid represented by such payment.

[T.D. 7536, 43 FR 13519, Mar. 31, 1978]

**§ 48.4216(d)-1 Sales of installment accounts.**

(a) *In general.* Except as provided in paragraph (d) of this section, in case of a sale or other disposition by a manufacturer, producer, or importer of an installment account of the type specified in section 4216(c), the tax shall not apply to subsequent installment payments on such account. Instead, there shall be paid an amount equal to the difference between the tax previously paid on such installment account and the total tax computed by applying:

(1) To each installment due before the sale of the installment account, the rate of tax applicable at the time payment thereof was due, and

(2) To each installment, the time for payment of which has not arrived, the rate of tax which, under the provisions of Chapter 32 as in effect on the date of the sale of the installment account, is (or is to be) in effect on the date such installment is due.

However, see paragraph (b) of this section if the sale is made in a bankruptcy or insolvency proceeding. The tax due under this paragraph shall be included in the return for the period in which the account is sold.

(b) *Sale in bankruptcy or insolvency proceeding.* In the case of a sale of an installment account of a manufacturer, producer, or importer pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a