

determined for purposes of the tax under the 2 percent rate.

(5) *Constructive sale price.* If a producer uses coal mined by the producer in other than a mining process, a constructive sale price must be used in determining the tax under the 2 percent rate. This constructive price is determined under sections 613(c) and 4218(e) of the Code, and is based on sales of like kind and grade of coal by the producer or other producers made f.o.b. mine (if the coal is used without first being cleaned) or f.o.b. cleaning plant (if the coal is cleaned before it is used). Normally, this constructive price will be the same as the constructive price used in determining the producer's percentage depletion deduction.

[T.D. 7726, 45 FR 66453, Oct. 7, 1980; 45 FR 69214, Oct. 20, 1980; T.D. 8448, 57 FR 48186, Oct. 22, 1992]

Subpart J [Reserved]

Subpart K—Sporting Goods

SOURCE: Sections 48.4161(a)-1 through 48.4161(b)-5 contained in T.D. 7328, 39 FR 36586, Oct. 11, 1974 unless otherwise noted. Sections 48.4181-1 through 48.4182-2 contained in T.D. 6454, 25 FR 1774, Mar. 1, 1960, unless otherwise noted.

§ 48.4161(a) [Reserved]

§ 48.4161(a)-1 Imposition and rate of tax; fishing equipment.

(a) *Imposition of tax.* Section 4161(a) imposes a tax on the sale of the following articles of fishing equipment (including in each case parts or accessories of such articles sold on or in connection therewith or with the sale thereof) by the manufacturer, producer, or importer thereof:

- (1) Fishing rods;
- (2) Fishing creels;
- (3) Fishing reels; and
- (4) Artificial lures, baits, and flies.

The tax applies only to those items of fishing equipment specified in section 4161(a) and this paragraph. Therefore, other items of fishing equipment, such as fishing nets, lines, hooks, sinkers, gaffs, etc., are not subject to the tax. Furthermore, the tax applies only to those specified articles of fishing equipment that are designed or con-

structed for use in the sport of fishing. Accordingly, the tax does not apply to those articles which, although nominally articles that are specified in section 4161(a), are in the nature of toys or novelties that merely simulate articles of a type referred to in section 4161(a), and are not designed or constructed for practical use in the sport of fishing.

(b) *Rate of tax.* Tax is imposed on the sale of the articles enumerated in section 4161(a) and paragraph (a) of this section at the rate of 10 percent of the price for which such articles are sold. For the definition of the term "price" see section 4216 and the regulations thereunder.

(c) *Liability for tax.* The tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0-2(a)(4).

[T.D. 7328, 39 FR 36586, Oct. 11, 1974, as amended by T.D. 8043, 50 FR 32014, Aug. 8, 1985]

§ 48.4161(a)-2 Meaning of terms.

(a) *Fishing rods.* The term "fishing rods" includes all articles, however designated, that are designed or constructed for use in conjunction with a fishing reel for casting a line and hook in the sport of fishing. The term does not include any article that is neither designed for use in casting, nor suitable for such use. A so-called fishing rod "blank" is not considered to be a "fishing rod" unless the blank contains an affixed handle and reel seat, or is sold in the form of a kit that contains a rod blank, a handle, and a reel seat.

(b) *Fishing creels.* The term "fishing creels" includes all portable containers, of whatever material made, that are designed for storing and carrying fish from the time they are caught until such time as they are removed from the container for consumption or preservation. The term does not include any article primarily designed for use in the commercial fishing industry, or an article such as a collapsible wire basket designed to be hung over the side of a boat to keep fish captive and alive in the water.

(c) *Fishing reels.* The term "fishing reels" includes all mechanical and electrical devices that contain a spool