

within an industry which is practical in application, the normal method of sales within an industry shall be regarded as not being at retail or to retailers, or both, if the industry dollar volume of sales which are at retail or to retailers, or both, is less than half the total industry dollar volume of sales at all levels of distribution by manufacturers, producers, or importers, including sales to other manufacturers, producers, or importers.

(5) *Industry.* Each of the following categories of articles upon which tax is imposed by section 4061(a) constitutes a separate “industry”:

(i) Taxable automobile trucks (consisting of automobile truck bodies and chassis);

(ii) Taxable automobile buses (consisting of automobile bus bodies and chassis);

(iii) Taxable truck and bus trailers and semitrailers (consisting of chassis and bodies of such trailers and semitrailers); and

(iv) Taxable tractors of the kind chiefly used for highway transportation in combination with a trailer or semi-trailer.

(6) *Application of section 4216(b)(2) to certain sales before June 22, 1965.* In the case of sales before June 22, 1965, of articles then taxable under section 4121 (relating to electric, gas, and oil appliances), section 4216(b)(2) also applied in the case of a sale of such an article to a special dealer. The applicability of section 4216(b)(2) to such a sale may be determined by inserting “or to a special dealer” following “or to a retailer” in so much of section 4216(b)(2) as precedes subparagraph (A); by inserting “or to special dealers” following “retailers” in section 4216(b)(2)(A); and by inserting “(other than special dealers)” after “wholesale distributors” in section 4216(b)(2)(B) and so much of section 4216(b)(2) as follows section 4216(b)(2)(D). A “special dealer” was a distributor of articles taxable under section 4121 who did not maintain a sales force to resell the article whose constructive sale price was established under section 4216(b)(2) but relied on salesmen of the manufacturer, producer, or importer of the article. In the case of sales before June 22, 1965, of articles taxable under section

4191 (relating to business machines) or section 4211 (relating to matches), section 4216(b)(2) was applicable in the same manner as in the case of articles taxable under section 4061(a). With respect to sales after September 30, 1972, section 4216(b)(2)(C) applied only to articles taxable under section 4061(a), 4191, or 4211. Section 4216(b)(2)(C) was applicable to sales before October 1, 1962, of all articles subject to tax under Chapter 32.

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§ 48.4216(b)-4 Constructive sale price; affiliated corporations.

(a) *In general.* Sections 4216(b) (3), (4), and (5) establish procedures for determining a constructive sale price under section 4216(b)(1)(C) for sales between corporations that are members of the same “affiliated group”, as that term is defined in section 1504(a).

(b) *Sales to which section 4216(b)(3) applies.* Section 4216(b)(3), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where:

(1) A manufacturer, producer or importer regularly sells a taxable article (other than an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.)) to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer or importer, and

(2) The wholesale distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors.

Under such circumstances the constructive sale price for the article shall be an amount equal to 90 percent of the lowest price for which the distributor regularly sells the article in arm’s-length transactions to such independent retailers. Once the constructive sale price has been determined, no adjustment shall be made for sections 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments. If both section 4216(b)(3) and section 4216(b)(4) apply with respect to the sale of an article, the constructive sale price for such article shall be the lower of the prices computed under section 4216(b)(3) and section 4216(b)(4).

(c) *Sales to which section 4216(b)(4) applies.* Section 4216(b)(4), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where:

(1) A manufacturer, producer, or importer regularly sells (except for tax-free sales) a taxable article only to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer, or importer,

(2) The distributor regularly sells (except for tax-free sales) such article only to retail dealers, and

(3) The normal method of sales for such articles within the industry is to sell such articles in arm's-length transactions to wholesale distributors.

Section 4216(b)(4) applies with respect to articles taxable under section 4061(a) (relating to trucks, buses, etc.) only as to sales after December 31, 1969, and before January 1, 1971. Under section 4216(b)(4), the constructive sale price of such article shall be the median price at which the distributor, at the time of the sale by the manufacturer, resells the article to retail dealers, reduced by a percentage of such price equal to the percentage which:

(i) The difference between the median price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers of producers thereof, and the median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of

(ii) The median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers.

For purposes of this paragraph, the "median price" for which an article is sold at a particular level of distribution is the price midway between the highest and lowest prices charged vendees at the particular level of distribution. Where only one price is charged at a level of distribution, "median price" is equivalent to "actual price". All sale prices referred to in paragraphs (b), (c), (d), and (e) of this section are prices that must reflect the inclusions and exclusions set forth in sections 4216(a) and (f). However, once a constructive sale price has been determined under these paragraphs, no further adjustment of such price is allowed.

(d) *Application of section 4216(b)(4).* The application of section 4216(b)(4) and paragraph (c) of this section may be illustrated by the following example:

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:

$$\text{constructive sale price} = \$15.00 - \left(\$15.00 \times \frac{\$16.00 - \$12.00}{\$16.00} \right) = \$11.25$$

(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

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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

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accorded that term in subparagraph (4) of § 48.4216(b)-3(b).

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§ 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 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