

§ 48.4217-1 Lease considered as sale.

For purposes of Chapter 32 of the Code, the lease of an article by a manufacturer, producer, or importer shall be considered a sale of the article. The term "lease" means a contract or agreement, written or verbal, which gives the lessee an exclusive, continuous right to the possession or use of a particular article for a period of time. The term includes any renewal or extension of a lease or any subsequent lease of the article. However, in the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the term includes only the first lease (excluding any renewal or extension of the lease) of such automobile by the manufacturer.

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§ 48.4217-2 Limitation on amount of tax applicable to certain leases.

(a) *Conditions for eligibility.* Section 4217(b) provides for a limitation on the amount of tax that shall apply to the lease, any renewal, or further lease, of an article which, if sold, would be subject to tax on the basis of sale price. Such limitation on the amount of the tax applies with respect to the lease of an article only if, at the time of making the lease, the lessor is engaged in the business of selling in arm's length transactions the same type and model of article. In case of a lease to which section 4217(b) does not apply, tax shall be computed and paid as provided in section 4216(c) and paragraph (a) of § 48.4216(c)-1.

(b) *Lessor engaged in business of selling.* The lessor will be regarded as being engaged in the business of selling in arm's length transactions the same type and model of an article as the one being leased if it periodically and recurringly makes bona fide offers for sale of such articles in the regular course of operation of its business, which offers if accepted would constitute sales at arm's length. Whether the offers are bona fide shall be determined on the basis of the facts in each case, such as sales actually made, the nature of the advertising, sales literature, and other means used to effec-

uate sales. It is not necessary that the offers for sale be made to the same class of purchasers as those to whom the article is being leased.

(c) *Same type and model of article.* To qualify as the "same type and model of article", the article offered for sale must be an unused article essentially the same in size, design, and function as the article being leased. For example, a van-type truck trailer would not be the same type and model as a stakebody of flat-bed truck trailer. Neither would a 25-foot van-type trailer be the same type and model as a 35-foot van-type trailer. Slight differences in appearance or accessories will not render articles dissimilar which are identical in all other respects.

(d) *Basis for tax—(1) Tax payable until total tax is paid.* In case of a lease of an article to which section 4217 (b) applies, tax shall be paid on each lease payment in an amount computed by applying to such lease payment a percentage equal to the rate of tax in effect on the date of the lease payment. Such tax payments shall continue to be made under such lease, or any subsequent lease of the article, until the cumulative total of the tax payments equals the total tax. Lease payments made thereafter with respect to that article shall not be subject to tax. For definition of the term "total tax", see paragraph (e) of this section.

(2) *Changes in tax rates.* Except as provided in:

(i) Section 701 (a) (3) of the Excise Tax Reduction Act of 1965 (79 Stat. 155) in the case of certain reductions in tax rates effective June 22, 1965, or January 1, 1966, and

(ii) Section 401(h)(3) of the Revenue Act of 1971 (85 Stat. 534) in the case of certain reductions in tax rates effective December 11, 1971, if the rate of tax is increased or decreased during a lease period, the new rate shall apply to the lease payments made on and after the date of the change, but the amount of the total tax shall remain the same.

(e) *Total tax.* For purposes of this section, the term "total tax" means the amount of tax, computed at the rate in effect on the date of the first lease of

§ 48.4218-1

the article to which section 4217(b) applies, which would be due on the constructive sale price of the article as determined under section 4216(b) and § 48.4216(b)-2, as if the article had been sold by a manufacturer at retail on such date.

(f) *Sale of article before total tax becomes payable.* If the lessor sells the article before the total tax has become payable, the tax payable on the sale shall be the lesser of the following amounts:

(1) The difference between (i) the total tax, and (ii) the aggregate tax applicable to lease payments already received; or

(2) A tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold.

For purposes of subparagraph (2) of this paragraph, the provisions of section 4216(b) for determining a constructive sale price shall not apply if the sale is at arm's length. If the sale is not at arm's length, the tax referred to in subparagraph (2) of this paragraph shall be computed on a constructive sale price as provided in § 48.4216(b)-2.

(g) *Sale of article after total tax has become payable.* If the lessor sells an article after the total tax has become payable, the tax imposed under Chapter 32 of the Code shall not apply to such sale.

(h) *Special rules applicable to certain leases entered into before January 1, 1959.* For purposes of this section, in the case of any lease entered into before, and existing on, January 1, 1959:

(1) Such lease shall be considered to have been entered into on January 1, 1959.

(2) The total tax shall be computed on the fair market value of the article on January 1, 1959.

(3) The lease payments under such lease shall include only payments attributable to periods beginning after December 31, 1958.

(i) *Cross-reference.* In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing provisions of this section shall not apply. See section 4217 (e) for the

26 CFR Ch. I (4-1-12 Edition)

rules relating to the payment of the gas guzzler tax.

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USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE

§ 48.4218-1 Tax on use by manufacturer, producer, or importer.

(a) *In general.* Section 4218 imposes tax in respect of certain uses of articles by the actual manufacturer, producer, or importer thereof. This section also applies in respect of the use of articles by any other person who, pursuant to a provision of Chapter 32 of the Code, is considered to be, or is treated as, the manufacturer or producer of the articles. See, for example, section 4223 relating to articles purchased tax free for use in further manufacture.

(b) *Taxable articles in general—(1) Application of tax.* If the manufacturer, producer, or importer of an article taxable under Chapter 32 of the Code (other than an article referred to in paragraph (a), (d), or (e) of this section) uses the article for any purpose other than that indicated in subparagraph (3) or (4) of this paragraph, he shall be liable for tax with respect to the use of such article in the same manner as if the article were sold by him.

(2) *Taxable use in manufacture of nontaxable articles—(i) In general.* In the case of an article to which subparagraph (1) of this paragraph applies, tax attaches when the manufacturer, producer, or importer of the article uses it as material in the manufacture or production of, or as a component part of, another article which is not taxable under Chapter 32 of the Code, regardless of the disposition made of such other article. (See paragraph (c) of § 48.4218-5 for computation of tax on such use.)

(ii) *Types of use in manufacture of nontaxable articles.* Taxable use may consist of the incorporation of a taxable article, such as an electric light bulb, into a nontaxable article, such as a flashlight. Taxable use may also result from the combining of a taxable article (or the components thereof) with a nontaxable article (or the components of a nontaxable article) resulting in a