

but uses it as material in the manufacture or production of, or as a component part of, a nontaxable combination article consisting of a taxable and nontaxable article, liability for tax on his use shall be computed on the constructive price of the taxable article at the time of use. To determine the constructive price of the taxable article in such case, the combination article is considered to be composed of (1) parts used exclusively in the functioning of the taxable article in the combination, (2) parts used exclusively in the functioning of the nontaxable article in the combination, and (3) parts, called common parts, which serve a dual function in connection with the parts in both subparagraphs (1) and (2) of this paragraph. The ratio which the cost of the parts in subparagraph (1) of this paragraph bears to the sum of the cost of such parts and the parts in subparagraph (2) of this paragraph is applied to the lowest established wholesale price for which like combination articles are at the time of the taxable use being sold by the manufacturer or producer in the ordinary course of trade. The resulting amount is the constructive sale price for the taxable article on which tax is to be computed. The cost of the common parts is allocable to the parts in subparagraphs (1) and (2) of this paragraph in the same ratio, and, therefore, need not be taken into account in the computation since the inclusion and allocation of the cost of such parts in the determination would not result in a different ratio. In determining the lowest established wholesale price for the combination article, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a), 4216(f), and 6416(b)(1), as in effect at the time tax liability on the use of the taxable article is incurred, and the regulations thereunder contained in this subpart and Subpart O of this part. The tax applicable to the use of the article for which a constructive sale price has been computed is not affected by any charges or readjustments of the price for which the nontaxable combination article is sold, whether by reason of the return or repossession of the nontaxable article or its covering or container, or by a bona fide discount, re-

bate, allowance, or other factor. The application of this subparagraph may be illustrated by the following example:

*Example.* A manufacturer of a nontaxable washer-drier combination produces and uses an electric clothes drier taxable under section 4121 in the manufacture of the combination article. The lowest established wholesale price of the manufacturer for the washer-drier combination at the time of the taxable use is \$150 with respect to identical combinations after including and excluding applicable charges and readjustments. The manufacturer does not regularly sell such drier separately. In the manufacture of the washer-drier the two units are integrated to the extent that certain component parts function both in the operation of the washer and of the drier. The parts used exclusively in the operation of the washer cost \$30 and those used exclusively in the operation of the drier cost \$20. The taxable cost ratio in this instance is 20/50, or 40 percent. Applying 40 percent to the manufacturer's lowest established wholesale price of \$150 for the washer-drier results in \$60 as the constructive price for the taxable article in the combination at the time tax liability is incurred. No additional charges or readjustments in connection with, or subsequent to, the sale of the washer-drier combination may affect the tax liability incurred at the time of use.

(d) *Tax based on weight or volume.* Where liability for tax is incurred on the use of an article subject, if sold, to a tax based on:

(1) The weight of the article (such as a tire), or

(2) The volume of the article (such as gasoline or lubricating oil),

the tax due shall be computed on the basis which would be applicable if such article were sold.

[T.D. 6687, 28 FR 11781, Nov. 5, 1963]

APPLICATION OF TAX IN CASE OF SALES BY OTHER THAN MANUFACTURER OR IMPORTER

**§ 48.4219-1 Sales of taxable articles by a person other than the manufacturer, producer, or importer.**

(a) *General rule.* If the title to, or ownership of, an article taxable under Chapter 32 of the Code is transferred from the manufacturer, producer, or importer thereof, and, under the law, no tax attaches to such transfer, the subsequent sale, lease, or use of such article by the transferee is subject to

tax to the same extent and in the same manner as if such transferee were the manufacturer, producer, or importer of the article. The following examples illustrate this rule:

(1) The surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, of a deceased manufacturer, producer, or importer of taxable articles, incur liability for tax on all such articles sold by them.

(2) A receiver or trustee in bankruptcy who under a court order conducts or liquidates the business of a manufacturer, producer, or importer of taxable articles, incurs liability for tax on all taxable articles sold by him, regardless of whether the articles were manufactured, produced, or imported before or after he took charge of the business.

(3) An assignee for the benefit of creditors of a manufacturer, producer, or importer incurs liability for tax with respect to all taxable articles sold by him as such assignee.

(4) If one or more members of a partnership withdraw, or if new partners are admitted, the new partnership so constituted incurs liability for tax on all taxable articles sold by it regardless of when such articles were manufactured, produced, or imported.

(5) A person who acquires title to taxable articles as a result of default of the manufacturer, producer, or importer pursuant to an agreement under the terms of which the articles were pledged as collateral incurs liability for tax with respect to his sale of the articles so acquired.

(6) A person who succeeds to the business of a manufacturer, producer, or importer of taxable articles, such as:

(i) A corporation which results from a consolidation, merger, or reorganization;

(ii) A corporation which acquires the business of an individual or partnership; or

(iii) A stockholder in a corporation who, after its dissolution, continues the business;

incurs liability for tax on all taxable articles sold by such person. However, where a manufacturer, producer, or importer sells only his assets, rather than ownership of his business, he incurs li-

ability for tax on the sale of any taxable articles included in such assets.

(b) *Transfer of title to damaged articles.* If title to a damaged taxable article is transferred by the manufacturer, producer, or importer thereof to a carrier or insurance company in adjustment of a damage claim, such transfer is not considered a taxable sale of the article. If the article is usable, even though damaged, the carrier or insurance company incurs liability for tax on its sale, lease, or use of the article. Where the article has been damaged to the extent that its only value is as scrap, and it is not restored to usable condition, sale thereof by the carrier or insurance company is not subject to tax.

[T.D. 6687, 28 FR 11782, Nov. 5, 1963]

### Subpart N—Exemptions, Registration, Etc.

SOURCE: T.D. 7536, 43 FR 13522, Mar. 31, 1978, unless otherwise noted.

#### § 48.4221-1 Tax-free sales; general rule.

(a) *Application of regulations under section 4221—(1) In general.* The regulations under section 4221 provide rules under which the manufacturer, producer, or importer of an article subject to tax under chapter 32 (or the retailer of an article subject to tax under subchapter A or C of chapter 31) may sell the article tax free under section 4221.

(2) *Limitations.* The following restrictions must be taken into account in applying the regulations under section 4221:

(i) The exemptions under section 4221 (a)(4) and (a)(5) do not apply to the tax imposed by section 4064 (gas guzzler tax).

(ii) The exemptions under section 4221 do not apply to the tax imposed by section 4081 (taxable fuel tax).

(iii) The exemptions under section 4221 do not apply to the tax imposed by section 4091 (aviation fuel tax). For rules relating to tax-free sales of aviation fuel, see section 4092 and the regulations thereunder.

(iv) The exemptions under section 4221 do not apply to the tax imposed by section 4121 (coal tax).

(v) The exemptions under section 4221 (a)(3) through (a)(5) do not apply to the