

§ 53.102

Total charges	106,000
Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays \$3,000 during the first calendar quarter of the year to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.	
Computation as of close of first calendar quarter:	
1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price	\$106,000
2. Amounts billed as separate charges for local advertising	-6,000
d. Difference	100,000
4. Overall 5 percent limitation (5 percent of item 3)	5,000
5. Amount excluded in computing taxable price (see paragraph (c) of § 53.100)	-5,000
6. Unused portion of limitation	0
7. Allocation, pursuant to agreement, of \$3,000 paid to distributors:	
Charges for local advertising	2,000
Contributions by manufacturer	1,000

Credit or refund may not be claimed in respect of that portion of the total amount repaid to the distributors (\$3,000) which is allocated to the manufacturer's contribution (\$1,000) since the amount excluded in computing taxable price is equal to the overall 5 percent limitation.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]

§ 53.102 No exclusion or readjustment for other advertising charges or reimbursements.

(a) *Exclusions from price.* No exclusion in computing the taxable price of any article sold by the manufacturer may be allowed in respect of any charge for advertising if, and to the extent that, such charge:

- (1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) of the Code and paragraphs (a) and (b) of § 53.100, or
- (2) Does not satisfy all of the conditions and limitations stated in section 4216(e)(1) of the Code and paragraph (c) of § 53.100.

(b) *Readjustments of price.* No credit or refund under section 6416(b)(1) of the Code may be allowed in respect of any amount which was included in the taxable price of an article sold by the manufacturer and which was later paid by him to his vendee in reimbursement of costs incurred for advertising, if, and to the extent that, the amount so paid:

- (1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) of the Code and paragraph (b) of § 53.100, or
- (2) Is not within the limitation provided in section 4216(e)(2) of the Code, as computed in accordance with § 53.101, as of the close of the calendar quarter in which the amount is so paid over or as of the close of any subsequent calendar quarter in the same calendar year. See, however, § 53.175, relating to redetermination of price readjustments in cases where local advertising charges excluded from taxable price in one calendar year become taxable as of May 1 of the following calendar year.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]

§ 53.103 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.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991; T.D. 372, 61 FR 20724, May 8, 1996]

§ 53.104 Limitation on amount of tax applicable to certain leases.

(a) *Conditions for eligibility.* Section 4217(b) of the Code 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) of the Code does not apply, tax shall be computed and paid as provided in section 4216(c) of the Code and paragraph (a) of § 53.98.

(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 effectuate 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. 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 in paid.* In case of a lease of an article to which section 4217(b) of the Code 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.* 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 the article to which section 4217(b) of the Code applies, which would be due on the constructive sale price of the article as determined under section 4216(b) of the Code and § 53.95, 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 (f)(2) of this section, the provisions of section 4216(b) of the Code 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 (f)(2) of this section shall be computed on a constructive sale price as provided in § 53.95.

(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.

USE BY MANUFACTURER OR IMPORTER
CONSIDERED SALE

§ 53.111 Tax on use by manufacturer, producer, or importer.

(a) *In general.* Section 4218 of the Code 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,