

**§ 53.101**

charge, see paragraph (b)(3) of § 53.101. In any case where the payment is determined to be attributable to such a charge, the date of the sale in connection with which the charge was made shall be determined on a first-in-first-out basis in respect of the vendee to whom the charge was billed by the manufacturer.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31083, July 9, 1991]

**§ 53.101 Limitation on aggregate of exclusions and price readjustments.**

(a) *In general.* The sum of the amount excluded from taxable price in respect of charges for local advertising, as provided in section 4216(e)(1) of the Code and § 53.100, plus the amount of the readjustments for which credits or refunds may be claimed in respect of local advertising, as provided in section 6416(b)(1) of the Code and § 53.175, is subject to an overall 5 percent limitation. This limitation applies to each manufacturer, as of the close of each calendar quarter, in respect of all articles taxable under the same section of chapter 32 of the Code which were sold by such manufacturer in such quarter (and the preceding quarter or quarters, if any, in the calendar year).

(b) *Computation of overall 5 percent limitation—(1) In general.* The limitation prescribed by section 4216(e)(2) of the Code (the “overall 5 percent limitation” referred to in paragraph (a) of this section) as to the total of the exclusions from price and readjustments of price which may be claimed for local advertising in respect of all articles taxable under the same section of Chapter 32 of the Code shall be computed as of the close of each calendar quarter of the calendar year. The overall 5 percent limitation is 5 percent of the difference between:

(i) The amount which would constitute the total taxable price (computed at the time of sale) of all articles taxable under the same section of chapter 32 of the Code sold by the manufacturer during the elapsed calendar quarters of the calendar year, if no part of any charge for local advertising were excludable in computing taxable price, and

(ii) The total of all amounts billed as separate charges for local advertising of such articles (whatever the amount of any single charge of the total of all charges).

(iii) In making the computations under paragraphs (b)(1) (i) and (ii) of this section, credits or refunds under section 6416(b) of the Code of tax paid on the sale of any such articles are to be disregarded and articles sold tax-free by the manufacturer are to be excluded. The amount by which the overall 5 percent limitation computed as of the close of a particular calendar quarter in respect of articles taxable under the same section of chapter 32 of the Code exceeds the sum of the charges for local advertising excluded in computing the taxable price and the amount of reimbursements for local advertising of such articles made during the elapsed calendar quarters of the calendar year, in respect of which credit or refund has been claimed, represents the unused portion of the overall 5 percent limitation. Such unused portion is the maximum amount of reimbursements for local advertising in respect of which credit or refund may be claimed at the close of the particular calendar quarter, subject to the applicable conditions and limitations governing the right to claim a credit or refund in respect of local advertising (see § 53.175). The unused portion of the overall 5 percent limitation as of the close of the fourth calendar quarter of a calendar year in respect of which credit or refund may not be claimed as of the close of such quarter must be disregarded in computing the overall 5 percent limitation for any subsequent calendar quarter. Moreover, the amount of any reimbursements for local advertising made by a manufacturer in a calendar year which is in excess of the amount of such reimbursements in respect of which credit or refund may be claimed, within the overall limitation, as of the close of the calendar year, may not subsequently serve as the basis for a credit or refund.

(2) *Alternative method of computation in certain cases.* If during the portion of the calendar year ending with the date as of which the overall 5 percent limitation is being computed the amount of the local advertising charge separately

billed by the manufacturer has not, in respect of any sale of any articles taxable under the same section of chapter 32 of the Code, exceeded the amount excludable pursuant to §53.100 in computing taxable price, the overall 5 percent limitation as of the close of a particular calendar quarter in respect of articles taxable under such section is 5 percent of the total taxable price (computed at the time of the sale) of all such articles sold taxpaid during the calendar year.

(3) *Allocation of amounts paid in reimbursement of expenditures for local advertising.* If a manufacturer makes contributions to a local advertising program in connection with which he makes excludable local advertising charges, it is necessary that reimbursements by the manufacturer for local advertising be attributed to the charges for local advertising, to the manufacturer's contributions, or allocated between them. Whether an amount paid by a manufacturer in reimbursement of expenses for local advertising is or is not a repayment of a local advertising charge which was excluded from taxable price under section 4216(e)(1) of the Code and §53.100, shall be determined on the basis of an allocation made under the agreement between the manufacturer and his vendee (or any subsequent vendee).

(c) *Examples.* The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

*Example (1).* During the first and second calendar quarters of the year, a manufacturer makes sales of articles taxable under section 4181 to his distributors. The total charges for such sales, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a) of the Code, in computing taxable price, are as follows:

First Quarter:	
Articles taxable under Section 4181 .....	\$100,000
Local advertising charges .....	3,000
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Total Charges .....	103,000
Second Quarter:	
Articles taxable under Section 4181 .....	\$150,000
Local advertising charges .....	4,000
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Total Charges .....	154,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays \$5,500 and \$1,000 during the first and second calendar quarters of the year, respectively, 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 .....	\$103,000
2. Amounts billed as separate charges for local advertising .....	- 3,000
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3. Difference .....	100,000
4. Overall 5 percent limitation (5 percent of item 3) ....	\$5,000
5. Amount excluded in computing taxable price .....	- 3,000
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6. Unused portion of limitation .....	2,000
7. Allocation, pursuant to agreement, of \$5,500 paid to distributors:	
Charges for local advertising .....	\$3,000
Contributions by manufacturer .....	\$2,500

Readjustment may be claimed in respect of that portion of the total amount repaid to the distributors which is allocated to the manufacturer's contribution (\$2,500) to the extent that such portion does not exceed the unused portion of the overall 5 percent limitation (\$2,000). Accordingly, as of the close of the first calendar quarter the manufacturer may claim credit or refund in respect of a readjustment of price in the amount of \$2,000.

Computation as of close of second 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 (\$103,000+\$154,000) .....	\$257,000
2. Amounts billed as separate charges for local advertising (\$3,000+\$4,000) .....	- 7,000
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3. Difference .....	250,000
4. Overall 5 percent limitation (5 percent of item 3) ....	\$12,500

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5. Amount excluded in computing taxable price (\$3,000+\$4,000) plus readjustment claimed at end of first calendar quarter (\$2,000) .....	- 9,000
6. Unused portion of limitation .....	3,500
7. Allocation, pursuant to agreement, of \$6,500 (\$5,500+\$1,000) paid to distributors:	
Charges for local advertising .....	\$3,500
Contributions by manufacturer .....	\$3,000

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

Although the total reimbursements for local advertising expenses attributable to contributions by the manufacturer (\$3,000) does not exceed the unused portion of the overall 5 percent limitation (\$3,500), the manufacturer, having taken, at the close of the first calendar quarter, a price readjustment in the amount of \$2,000 in respect to his contributions, is entitled at the close of the second calendar quarter to claim credit or refund in respect of a price readjustment in the amount of \$1,000 (\$3,000 - \$2,000).

*Example (2).* During the first calendar quarter of the year, a manufacturer sold articles taxable under section 4181 to his distributors at a total charge of \$106,000, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a) of the Code, in computing taxable price. This total charge of \$106,000 was billed as follows:

Total Charge:	
Articles taxable under Section 4181 .....	\$100,000
Local advertising charges .....	6,000
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

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