

(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.

(4) Under section 4216(b)(4) of the Code, 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.

(iii) 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 (c) and (d) of this section are prices that must reflect the inclusions and exclusions set forth in section 4216(a) of the Code. 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) of the Code.* The application of section 4216(b)(4) of the Code 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 in-

dustry 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) of the Code and this paragraph is \$11.25, computed as follows:

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

(e) *Determination of "lowest price".* In addition to other considerations, in determining a "lowest price" for purposes of sections 4216(b) (1) and (3) of the Code and § 53.97, such price shall be determined:

(1) 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

(2) 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.

(f) *Definitions.* For purposes of this section and paragraphs (3) and (4) of section 4216(b) of the Code, the term "regularly sells" has the same meaning as that accorded the term "regular sales" in § 53.96(b)(3), and the term "normal method of sales in the industry" has the same meaning as accorded that term in § 53.96(b)(4).

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

#### § 53.98 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) of the Code and § 53.104, 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 § 53.103.

(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 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) of the Code 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 actual sale price. For example, if an article is sold at retail for \$100, and the constructive sale price for such an article computed under the provisions of section 4216(b)(1)(A) of the Code is \$75, the percentage which the constructive sale price bears to the actual sale price is 75 percent. Accordingly, only 75 percent of each installment payment is subject to tax.

(c) *Sales on credit.* Where articles are sold on credit under conditions other than those specified in paragraph (b) of this section, the entire tax shall be reported and paid with the return covering the period in which the sale is made, even though the price may not be paid to the manufacturer, producer,

or importer until a later date, or not paid at all.

**§ 53.99 Sales of installment accounts.**

(a) *In general.* Except as provided in paragraph (d) of this section, in case of a sale or other disposition by a manufacturer, producer, or importer of an installment account of the type specified in section 4216(c) of the Code, the tax shall not apply to subsequent installment payments on such account. Instead, there shall be paid an amount equal to the difference between the tax previously paid on such installment account and the total tax computed by applying:

(1) To each installment due before the sale of the installment account, the rate of tax applicable at the time payment thereof was due, and

(2) To each installment, the time for payment of which has not arrived, the rate of tax which, under the provisions of chapter 32 of the Code as in effect on the date of the sale of the installment account, is (or is to be) in effect on the date such installment is due. However, see paragraph (b) of this section if the sale is made in a bankruptcy or insolvency proceeding. The tax due under this paragraph shall be included in the return for the period in which the account is sold.

(b) *Sale in bankruptcy or insolvency proceeding.* In the case of a sale of an installment account of a manufacturer, producer, or importer pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount of tax due shall be computed and paid as provided in paragraph (a) of this section but shall not exceed the amount of tax computed by multiplying:

(1) The proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment, by

(2) The rate of tax which, under the provisions of chapter 32 of the Code as in effect on the date of the sale of the installment account, is (or is to be) in effect on the date such payment is due.

(c) *Collection of installment accounts on behalf of the manufacturer.* Where a manufacturer, producer, or importer retains title to an installment account