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has been sold or otherwise disposed of is returned to the manufacturer, producer, or importer who sold it under an agreement under which the account was sold, and credit or refund has been allowed under section 6416(b)(5) and the regulations thereunder, the manufacturer, producer, or importer shall pay tax as provided by section 4216(c) and § 48.4216(c)–1 on any subsequent payments made on such returned installment account until such time as there shall have been paid the total tax liability with respect to the account as computed under paragraph (a) of this section.

(e) *Limitation*. The sum of the amounts payable under this section and § 48.4216(c)–1 on an installment account shall not exceed the total amount of tax which would be payable if such installment account had not been sold or otherwise disposed of (computed as provided in subsection (c)).

(f) *Applicability of paragraphs (a) and (b) of this section*. The rules set forth in paragraphs (a) and (b) of this section apply in the case of installment accounts sold after June 21, 1965. In the case of installment accounts sold before June 22, 1965, paragraph (b) of this section shall be applied by substituting, in lieu of subparagraph (2) thereof, ''the rate of tax, as set forth in chapter 32 of the Code, which applied on the day on which the transaction giving rise to such installment accounts took place.''

[T.D. 7536, 43 FR 13520, Mar. 31, 1978]

§ 48.4216(e)–1 Exclusion of local advertising charges from sale price.

(a) *In general*. Section 4216(e) deals with the treatment to be accorded charges made by a manufacturer for, and reimbursements by a manufacturer of expenditures in connection with, the advertising of certain articles subject to excise tax under chapter 32 of the Code. Section 4216(e) provides an exclusion (which is in addition to the exclusions provided by section 4216(a) and the regulations thereunder) in respect of charges for local advertising, as defined in paragraph (b) of this section, for purposes of determining the price for which an article is sold. See paragraph (c) of this section. The exclusion provided by section 4216(e) and paragraph (c) of this section has application only if:

(1) In the case of articles sold during the period January 1, 1961, through December 31, 1962, the advertising is broadcast over a radio or television station, or appears in a newspaper; and

(2) In the case of articles sold on or after January 1, 1963, the advertising is broadcast over a radio or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

Section 4216(e) also provides an overall limitation in respect of the sum of the amount of the exclusions from price as charges for local advertising and the amount of the readjustments authorized under section 6416(b)(1) (relating to credits or refunds for price readjustments) in respect of reimbursements by a manufacture of expenditures for local advertising. See § 48.4216(e)–2. For provisions prohibiting exclusion from price or readjustment of price in respect of charges for, and reimbursements of expenditures for, advertising other than local advertising, see § 48.4216(e)–3.

(b) *Definition of local advertising*—(1) *In general*. For purposes of the regulations under sections 4216(e) and 6416(b)(1), the term ''local advertising'' means advertising which relates to an article with respect to which tax is imposed under Chapter 32 of the Code on the price for which sold and which:

(i) Is initiated or obtained by the purchaser or any subsequent vendee,

(ii) Names the article for which the price is determinable under section 4216 and states the location at which such article may be purchased at retail, and

(iii)(*a*) In the case of articles sold on or after January 1, 1961, and before January 1, 1963, is broadcast over a radio station or television station or appears in a newspaper, or

(*b*) In the case of articles sold on or after January 1, 1963, is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(2) *Initiating or obtaining advertising*. For purposes of subparagraph (1) of this paragraph, the advertising must be initiated or obtained by one or more of

the persons in the chain of distribution of the article (wholesale distributor, jobber, dealer, etc.) who purchased the article for resale. For purposes of this subparagraph, the manufacturer is not considered to be one of the persons in the chain of distribution of the article. In general, advertising of an article is considered to be initiated or obtained by one or more persons in the chain of distribution of the article if any such person:

(i) Takes an active part in the actual planning and development, or in the arrangements or negotiations leading to the development, of the form and content of the advertising, or

(ii) Contracts for the placement of the advertising.

The participation by the manufacturer of the article in the planning, development, or placement of the advertising is immaterial provided the advertising is in fact initiated or obtained by one or more persons in the chain of distribution of the article. Furthermore, it is immaterial whether or not the advertising is subject to the approval of the manufacturer of the article. However, if no person in the chain of distribution of the article takes an active part in the actual planning and development, or in the arrangements or negotiations leading to the development, of the form and content of the advertising, but, rather, all such planning, development, arrangements, and negotiations are accomplished by the manufacturer of the article, then such manufacturer is considered to have initiated the advertising, and if he also contracts for the placement of the advertising, such advertising does not qualify as ''local advertising''.

(3) *Identification of article and sales location.* To meet the requirements of subparagraph (1) of this paragraph, the advertising must identify the article for which the price is determinable under section 4216 and give the location or locations at which the article may be purchased at retail. All products taxable at the same rate under the same section of chapter 32 of the Code shall be considered to be an ''article'' for purposes of the preceding sentence. No specific method or means of identification is prescribed. The identification of the article may be made through the use of the name of the manufacturer or the use of an established trade-mark, such as a seal, picture, letter or letters, etc., or a combination thereof. The advertising must identify the particular retail establishment or establishments at which the article may be purchased at retail but need not specify the location of any such establishment in terms of the number by which the premises are designated or the name of the street on which the retail premises are situated. However, the location of the retail premises must be described sufficiently, as, for example, by reference to a particular named shopping area or shopping center, to enable consumers to find the retail establishment.

(4) *Determination of costs of local advertising.* Where an advertisement identifies more than one article, and all such articles are not taxable, or are not taxable at the same rate under the same section of Chapter 32 of the Code, a reasonable allocation of the cost of the advertisement must be made among (i) articles taxable at the same rate under the same section of the Code and (ii) articles which are not taxable under Chapter 32 of the Code. For example, in the case of a single page newspaper or magazine advertisement, an allocation of costs reflecting the lineage or space devoted to the specified categories will be considered to reflect a reasonable allocation of the cost of advertising the different articles. As a general rule, only the cost of the ''spot'' portion identifying the retail establishment is considered ''local advertising'' in the case of national television or radio programs.

(5) *Meaning of ''newspaper''.* The term ''newspaper'', as used in subparagraph (1) of this paragraph, is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless printed and distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which

is issued to supply information on certain subjects of interest to particular groups unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(6) *Meaning of ''magazine''.* The term ''magazine'', as used in subparagraph (1) of this paragraph, is limited to those publications which are (i) commonly understood to be magazines, (ii) printed and distributed periodically at least twice a year, and (iii) published for the dissemination of information of a general nature or of special interest to particular groups. The term does not include handbills, circulars, flyers or the like, unless printed and distributed as a part of a publication which constitutes a magazine within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be information of a general nature or information of special interest to particular groups within the contemplation of subdivision (iii) of this subparagraph.

(7) *Meaning of ''outdoor advertising sign or poster''.* The term ''outdoor advertising sign or poster'', as used in subparagraph (1) of this paragraph, means a sign or poster displaying advertising matter, which is located outside of a roofed enclosure. This term includes both signs or posters on billboards, whether placed on or affixed to land, buildings, or other structures, and those which are displayed on or attached to moving objects, provided the signs or posters are located outside of a roofed enclosure. The term ''roofed enclosure'' means a roof structure which is enclosed on more than one-half of its sides by walls, fences, or other barriers.

(c) *Exclusion*—(1) *Conditions and limitations.* A charge for local advertising which is required by a manufacturer to be paid as a condition to his sale of an article is not a part of the taxable price of the article, to the extent that such charge meets each of the following conditions and limitations:

(i) Such charge does not exceed 5 percent of the difference between (*a*) an amount which would constitute to taxable price of the article (computed at the time of the sale of the article) if no part of any charge for local advertising were excludable in computing taxable price and (*b*) the amount of any separate charge for local advertising, whatever the amount of such charge may be,

(ii) Such charge is specifically shown as a separate charge for local advertising on the invoice or statement covering the sale of the article.

(iii) Such charge is billed by the manufacturer with the intention on his part of repaying the amount of the charge to the person purchasing the article from him, or to any person who subsequently purchases the article for resale, in reimbursement of costs incurred or local advertising of such article or some other article or articles taxable at the same rate under the same section of the Code. In the absence of evidence to the contrary, the fact of such intention will be assumed in all cases where the manufacturer and his vendees are parties to an advertising plan which calls for such repayments, or the manufacturer can otherwise establish that the vendees to whom he bills such charges understand and expect that such repayments will be made.

(2) *When exclusion ceases to apply.* To the extent that charge for local advertising meets the conditions and limitations stated in subparagraph (1) of this paragraph, such charge is excludable in computing the taxable price of the article in respect of which the charge was made. However, the exclusion will cease to apply in respect of any part of such charge which the manufacturer fails to repay, before May 1 of the calendar year following the calendar year in which the article was sold, to the person who purchased the article from him, or to some other person who subsequently purchases the article for resale, in reimbursement of costs incurred for local advertising of such article or some other article or articles taxable at the same rate under the same section of the Code. If, before such May 1, any part of the charge so excluded has not been so repaid, the manufacturer becomes liable for tax on such May 1 in the same manner as if an article taxable under such section of the Code had been sold by him on such

May 1 at a taxable price equivalent to that part of the charge not so repaid. However, see paragraph (c)(2) of §48.6416(b)–1, relating to price readjustments in cases where local advertising charges are not repaid before such May 1 but are subsequently paid over by the manufacturer to his vendees in reimbursement of costs for local advertising. For provisions relating to the method of determining whether a payment by a manufacturer is or is not attributable to an excluded local advertising charge, see paragraph (b)(3) of §48.4216(e)–2. 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.

(d) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). During the first calendar quarter of 1961, a manufacturer sold refrigerators to one of his distributors at a total charge of $10,500, exclusive of tax, transportation charges, delivery charges, or other charges which are excludable in computing taxable price pursuant to section 4216(a). This total charge of $10,500 was billed as follows:

Refrigerators	$10,000
Local advertising charge	500
Total charge	10,500

At the time of the manufacturer's sales of the refrigerators, it was his intention, in accordance with the agreement between him and the distributor, to make repayment to the distributor of the local advertising charge, to the extent of expenditures by the distributor for radio, television, or newspaper advertising specifically naming refrigerators or other articles taxable at the same rate under section 4111 which were manufactured by the manufacturer, and giving the location of various retail stores within the distributor's territory where such articles may be purchased. Pursuant to such agreement, the selection of the advertising medium to be employed is to be made by the distributor, who is to plan the advertising subject to approval by the manufacturer, and contract for its placement. In this example, the advertising for which the charge is made qualifies as local advertising, the charge is billed to the manufacturer's vendee as a separate charge, the manufacturer intends to repay the charge to his vendee in reimbursement of costs incurred by the vendee for local advertising, and the charge does not exceed 5 percent of $10,000. Accordingly, the manufacturer's charge of $500 for local advertising is not includible in the taxable price of the refrigerators for purposes of computing and paying the tax imposed by section 4111.

Example (2). Assume the same facts as those stated in Example (1), and assume further that prior to May 1, 1962, the manufacturer has repaid to the distributor, in reimbursement of local advertising expenses incurred by the distributor in connection with refrigerators or other articles taxable at the same rate under section 4111 sold to him by the manufacturer, $400 of the $500 billed as a local advertising charge by the manufacturer in connection with his sale of refrigerators to the distributor in the first quarter of 1961. The manufacturer is liable, as of May 1, 1962, for tax in respect of the $100 which has not been repaid to the distributor. The amount of the tax is determinable at the rate in effect under section 4111 on May 1, 1962, in respect of refrigerators and is includible in the manufacturer's return of tax under such section for the second quarter of 1962.

Example (3). During the first calendar quarter of 1961, a manufacturer sold refrigerators to one of his distributors at a total charge of $11,000, exclusive of tax, transportation charges, delivery charges, or other charges which are excludable in computing taxable price under section 4216(a). This total charge of $11,000 was billed as follows:

Refrigerators	$10,000
Local advertising charge	1,000
Total charge	11,000

At the time of the manufacturer's sales of the refrigerators, it was his intention, in accordance with the terms of a cooperative advertising plan to which the manufacturer and the distributor were parties, to make repayment to the distributor of the local advertising charge. Pursuant to the plan, the repayment would be made to the extent of expenditures by the distributor for radio, television, or newspaper advertising, initiated or obtained by him, specifically naming refrigerators or other articles taxable at the same rate under section 4111 which were manufactured by the manufacturer, and giving the location of various retail stores within the distributor's territory where such articles may be purchased. In this example, only $500 of the manufacturer's charge of $1,000 for local advertising may be excluded in determining the taxable price of the refrigerators for purposes of reporting and paying the tax imposed by section 4111. The remaining $500 may not be excluded in computing the taxable price of the refrigerators since this is the amount by which the $1,000 local advertising charge exceeds 5 percent of $10,000. Thus, the taxable price of the refrigerators in this example is $10,500.

Example (4). Assume the same facts as those stated in Example (1), except that, pursuant to the agreement between the manufacturer and the distributor, the manufacturer is to contract for the placement of the local advertising. Payment of the $500 local advertising charge is to be made by the manufacturer to the person with whom the advertising is placed in satisfaction of the manufacturer's contractual liability to such person. Under these circumstances, the manufacturer's payment of the $500 charge to the person with whom the advertising is placed does not constitute a refund to the purchaser in reimbursement of costs incurred for local advertising.

[T.D. 6635, 28 FR 1201, Feb. 7, 1963, as amended by T.D. 6686, 28 FR 11410, Oct. 24, 1963. Redesignated and amended by T.D. 7536, 43 FR 13520, Mar. 31, 1978]

§ 48.4216(e)–2 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) and § 48.4216(e)–1, 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) and paragraph (c) of § 48.6416(b)–1, is subject to an over-all 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 which were sold by such manufacturer in such quarter (and the preceding quarter of quarters, if any, in the calendar year). For example, a manufacturer selling articles taxable under section 4061 (relating to automobiles, trucks, buses, etc.), and also selling articles taxable under section 4111 (relating to refrigerators, quick-freeze units, etc.), who makes separate charges for local advertising in connection with his sales, or who makes reimbursement of local advertising expenses to his vendees out of moneys previously included in taxable price, in respect of any one or more articles in each of the two groups must apply the limitation separately in relation to the articles taxable under section 4061 and in relation to the articles taxable under section 4111. However, in such case, no breakdown of the separate articles taxable under section 4061, or of the separate articles taxable under section 4111, is required.

(b) *Computation of over-all 5 percent limitation*—(1) *In general.* The limitation prescribed by section 4216(e)(2) (the ''over-all 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 over-all 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). In making the computations under subdivisions (i) and (ii) of this subparagraph, credits or refunds under section 6416(b) 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 over-all 5 percent limitation computed as of the close of a particular calendar quarter in respect of articles taxable under the same section 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 over-all 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 § 48.6416(b)–1). The unused portion