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.


§ 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 of the Code 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 refrigerators, quick-freeze units, etc.), and also selling articles taxable under section 4111 (relating to refrigerating expense 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 (1) 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
subsequent vendee). manufacturer and his vendee (or any made under the agreement between the determined on the basis of an allocation 4216(e)(1) and § 48.4216(e)–1, shall be de-
ccluded from taxable price under section
local advertising charge which was ex-
bursement of expenses for local ad-
charges, delivery charges, or other charges which are excludable, pursuant to
section 4216(a), in computing taxable price, are as follows:

### Example (1).
During the first and second calendar quarters of 1961, a manufacturer makes sales of articles taxable under section 4111 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), in computing taxable price, are as follows:

#### First Quarter
- Articles taxable under section 4111: $100,000
- Local advertising charges: $3,000
- Total charge: $103,000

#### Second Quarter
- Articles taxable under section 4111: $150,000
- Local advertising charges: $4,000
- Total charge: $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 1961, 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 not 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
3. Difference: $100,000
4. Over-all 5 percent limitation (5 percent of item 3): $5,000
5. Amount excluded in computing taxable price: $103,000
6. Unused portion of limitation: $5,000
7. Allocation, pursuant to agreement, or $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 over-all 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 or 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 not part of any charge for local advertising were excludable in computing taxable price: $103,000
   - Amount excluded in computing taxable price: $103,000
   - Price taxable under section 4111: $100,000
   - Local advertising charges: $3,000
   - Total charge: $157,000

2. Amounts billed as separate charges for local advertising: $4,000
3. Difference: $100,000
4. Over-all 5 percent limitation (5 percent of item 3): $5,000
5. Amount excluded in computing taxable price: $103,000
6. Unused portion of limitation: $5,000
7. Allocation, pursuant to agreement, or $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 over-all 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 or 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 not part of any charge for local advertising were excludable in computing taxable price: $103,000
   - Amount excluded in computing taxable price: $103,000
   - Price taxable under section 4111: $100,000
   - Local advertising charges: $3,000
   - Total charge: $157,000

2. Amounts billed as separate charges for local advertising: $4,000
3. Difference: $100,000
4. Over-all 5 percent limitation (5 percent of item 3): $5,000
5. Amount excluded in computing taxable price: $103,000
6. Unused portion of limitation: $5,000
7. Allocation, pursuant to agreement, or $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 over-all 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 or 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 not part of any charge for local advertising were excludable in computing taxable price: $103,000
   - Amount excluded in computing taxable price: $103,000
   - Price taxable under section 4111: $100,000
   - Local advertising charges: $3,000
   - Total charge: $157,000

2. Amounts billed as separate charges for local advertising: $4,000
3. Difference: $100,000
4. Over-all 5 percent limitation (5 percent of item 3): $5,000
5. Amount excluded in computing taxable price: $103,000
6. Unused portion of limitation: $5,000
7. Allocation, pursuant to agreement, or $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 over-all 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 or 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 not part of any charge for local advertising were excludable in computing taxable price: $103,000
   - Amount excluded in computing taxable price: $103,000
   - Price taxable under section 4111: $100,000
   - Local advertising charges: $3,000
   - Total charge: $157,000

2. Amounts billed as separate charges for local advertising: $4,000
3. Difference: $100,000
4. Over-all 5 percent limitation (5 percent of item 3): $5,000
5. Amount excluded in computing taxable price: $103,000
6. Unused portion of limitation: $5,000
7. Allocation, pursuant to agreement, or $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 over-all 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 or price in the amount of $2,000.
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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 over-all 5 percent limitation.


§ 48.4216(e)–3 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) and paragraphs (a) and (b) of § 48.4216(e)–1, or

(2) Does not satisfy all of the conditions and limitations stated in section 4216(e)(1) and paragraph (c) of § 48.4216(e)–1.

(b) Readjustments of price. No credit or refund under section 6416(b)(1) 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) and paragraph (b) of § 48.4216(e)–1, or

(2) Is not within the limitation provided in section 4216(e)(2), as computed in accordance with § 48.4216(e)–2, 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, paragraph (c)(2)(i) of § 48.6416(b)–1, 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.