

§ 48.4216(e)-3

26 CFR Ch. I (4-1-09 Edition)

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

Although the total reimbursements for local advertising expenses attributable to contributions by the manufacturer (\$3,000) does not exceed the unused portion of the over-all 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 of 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 1961, a manufacturer sold articles taxable under section 4111 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), in computing taxable price. This total charge of \$106,000 was billed as follows:

Articles taxable under section 4111	\$100,000
Local advertising charges	6,000
Total charge	\$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 1961 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	\$106,000
2. Amounts billed as separate charges for local advertising	6,000
3. Difference	\$100,000
4. Over-all 5 percent limitation (5 percent of item 3)	\$5,000
5. Amount excluded in computing taxable price (see paragraph (c) of § 48.4216(e)-1)	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 over-all 5 percent limitation.

[T.D. 6635, 28 FR 1203, Feb. 7, 1963. Redesignated and amended by T.D. 7536, 43 FR 13520, Mar. 31, 1978]

§ 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)(ii) 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.

[T.D. 6686, 28 FR 11411, Oct. 24, 1963. Redesignated and amended by T.D. 7536, 43 FR 13521, Mar. 31, 1978]