§ 53.97 Constructive sale price; affiliated corporations.

(a) In general. Sections 4216(b)(3) and (4) of the Code establish procedures for determining a constructive sale price under section 4216(b)(1)(C) of the Code for sales between corporations that are members of the same “affiliated group”, as that term is defined in section 1504(a) of the Code.

(b) Sales to which section 4216(b)(3) of the Code applies. Section 4216(b)(3) of the Code provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) of the Code in those instances where:

(1) A manufacturer, producer or importer regularly sells a taxable article to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producers or importer, and

(2) The wholesale distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors. Under such circumstances the constructive sale price for the article shall be an amount equal to 90 percent of the lowest price for which the distributor regularly sells the article in arm’s-length transactions to such independent retailers. Once the constructive sale price has been determined, no adjustment shall be made for inclusions or exclusions under section 4216(a) of the Code or price readjustments under section 6416(b)(1) of the Code. If both sections 4216(b)(3) and 4216(b)(4) of the Code apply with respect to the sale of an article, the constructive sale price for such article shall be the lower of the prices computed under sections 4216(b)(3) and 4216(b)(4).

(c) Sales to which section 4216(b)(4) of the Code applies. Section 4216(b)(4) of the Code provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) of the Code in those instance where:

(1) A manufacturer, producer, or importer regularly sells (except for tax-free sales) a taxable article only to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer, or importer.
§ 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.