(d) Charges for coverings, containers, and packing. Any charge by the manufacturer, producer, or importer for coverings and containers of whatever nature used to pack an article for shipment shall be included as part of the sale price for the purpose of computing the tax, whether or not the charges are identified as such on the invoice or are billed separately. Even though there is an agreement that the manufacturer, producer, or importer will repay all or a portion of the charge for the coverings or containers upon the return thereof, the full charge nevertheless shall be included in the sale price. It is immaterial whether the charge made at the time of sale is more or less than the actual value of the covering or container. See paragraph (b)(4) of §48.6416(b)–1 for provisions relating to the claiming of a credit or refund in the case of a price readjustment due to the return or repossession of a covering or container. Packing charges are to be included in the sale price whether the charges cover normal packing or special packing services, such as for extra protection of the article or for odd-lot quantities. This rule shall apply whether the packing services are initiated by the manufacturer, producer, or importer or are furnished at the request of the purchaser and whether the packing is performed by the manufacturer, producer, or importer or by another person at his request. If the purchaser supplies packing materials, the fair market value of such materials must be included in the tax base when computing tax liability on the sale of the article.

(e) Taxable and nontaxable articles sold as a unit. Where a taxable article and a nontaxable article are sold by the manufacturer as a unit, the tax attaches to that portion of the manufacturer’s sale price of the unit which is properly allocable to the taxable article. For example, where a fishing reel (an article subject to tax under section 4161(a)) is equipped with a fishing line (a nontaxable article) and the reel and line are sold as a unit, the tax imposed by section 4161(a) applies only to that portion of the manufacturer’s sale price of the unit which is properly allocable to the fishing reel. Normally, the taxable portion of such a unit may be determined by applying to the manufacturer’s sale price of the unit the ratio which the manufacturer’s separate sale price of the taxable article bears to the sum of the sale prices of both the taxable and nontaxable articles, if such articles are sold separately by the manufacturer. Where the articles (or either one of them) are not sold separately by the manufacturer and do not have established sale prices, the taxable portion is to be determined from a comparison of the actual costs of the articles to the manufacturer. Thus, if the cost of the taxable article represents four-fifths of the total cost of the complete unit, the tax applies to four-fifths of the price charged by the manufacturer for the unit.

[T.D. 7536, 43 FR 13517, Mar. 31, 1978]
§ 48.4216(a)–2

154

26 CFR Ch. I (4–1–11 Edition)

and what portion represents the tax. The computation is as follows:

\[
\text{Taxable sale price} = \frac{\text{sale price including tax}}{1 + \text{rate of tax}}.
\]

Thus, if the tax rate is 10 percent and the sale price including tax is $100, the taxable sale price is $90.91 (that is, $100 divided by \((100+10)\)), and the tax is 10 percent of $90.91, or $9.09.

(b) Transport, delivery, insurance, or installation charges—(1) Charges incurred pursuant to sale. Charges for transportation, delivery, insurance, installation, and other expenses actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale shall be excluded from the sale price in computing the tax. Such charges include all items of transportation, delivery, insurance, installation, and similar expense incurred after shipment to a customer begins, in response to the customer’s order, pursuant to a bona fide sale. However, costs of such nature incurred by a manufacturer, producer, or importer in transporting, in the normal course of business and for its benefit and convenience, articles from a factory or port of entry to a warehouse or other facility (regardless of the location of such warehouse or facility) are not considered as being incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, and charges therefor cannot be excluded from the sale price in computing the tax. Similarly, an allowance granted by a manufacturer as reimbursement for expenses incurred by the purchaser in shipping used articles to the manufacturer for credit against the purchase price of taxable articles shall not be excluded from the sale price when computing tax due on the sale of the taxable articles. In any event, no charge may be excluded from the sale price unless the conditions set forth in subparagraph (2) of this paragraph are complied with. Said conditions are prescribed under the authority granted the Secretary or his delegate in section 4216(a).

(2) Only actual expenses to be excluded. Where a separate charge is made for transportation or other expenses incurred in connection with the delivery of an article to the purchaser pursuant to a bona fide sale, there shall be excluded in arriving at the sale price subject to tax only that portion of the charge which represents the actual expenses incurred for the transportation or other excludible expenses. Where a separate charge is less than the actual expense, the difference is presumed to be included in the billed price. Such difference, together with the separate charge, shall be excluded in arriving at the sale price on which the tax is computed. Where transportation expense is incurred in connection with a shipment composed of both taxable and nontaxable articles, only the portion of the expense allocable to the taxable articles shall be excludible. In general, unless the taxpayer establishes to the satisfaction of the district director that another method reasonably apportions such freight expense between taxable and nontaxable articles, such expense should be apportioned on the basis of the relative weights (or, if available, the relative published tariff rates applicable to) the taxable and nontaxable articles. Where it is not feasible to apportion such expense on the basis of relative weights or tariff rates, the expense shall be apportioned on another reasonable basis; for example, in the case of a shipment including both taxable and nontaxable automotive parts which are subject to the same tariff rate, it may be appropriate to apportion the transportation expense on the basis of the relative sale prices. A charge for insurance in connection with the delivery of an article to a purchaser is considered to represent an expense actually incurred only to the extent that an amount equivalent to such charge is paid or payable by the manufacturer to a person authorized to assume such insurance risk.

(3) Transportation, delivery, or installation services performed by manufacturer. For purposes of computing the taxable sale price of articles, it is immaterial whether the transportation, delivery,
or other services of the type to which
this paragraph has application are per-
formed by a common carrier or inde-
pendent agency for or on behalf of the
manufacturer, producer, or importer,
or are performed by the manufacturer,
producer, or importer with the use of
its own vehicles or other facilities.
Thus, where a manufacturer, producer,
or importer performs the transpor-
tation, delivery, or other services with
its equipment, tools, employees, etc.,
the cost of such services allocable to
the sale of the taxable article shall be
excluded. In determining whether an
expense is an excludible transportation
or delivery expense, only those ex-
penses incurred by reason of the fact
that the purchaser accepts delivery at
some point other than the manufactur-
er’s place of business shall be consid-
ered excludible transportation or deliv-
ery expenses. All expenses incurred in
placing an article packed, ready for
shipment on the loading dock at the
manufacturer’s factory are not exclud-
able transportation or delivery ex-
penses. An allowance granted by the
manufacturer, producer, or importer to
the purchaser for transportation, deliv-
ery, or other expenses incurred or to be
incurred by the purchaser in connec-
tion with the sale shall be excluded in
computing the taxable sale price. If
charges for similar expenses would be
excludible if incurred by the manufac-
turer.

§ 48.4216(a)–3 Other items relating to
tax on sale price.

(a) Exchanges. If, in connection with
the sale of an article subject to a tax
imposed under Chapter 32 on the price
for which sold, a manufacturer receives
from its vendee another article in ex-
change, the tax on the manufacturer’s
sale shall be computed on the basis of
the amount allowed for the article re-
ceived from the vendee, plus any addi-
tional amount charged the vendee.

(b) Replacements under warranty. If an
article, subject to a tax imposed under
Chapter 32 on the price for which sold,
is returned to the manufacturer by rea-
son of the failure of the article under a
warranty as to its quality or service,
and a new article is given by the manu-
facturer, free, or at a reduced price, the
tax on the new article shall be com-
puted on the actual amount, if any, to
be paid to the manufacturer for the
new article. See paragraph (b)(2) of
§ 48.6416(b)–1 for the circumstances
under which the allowance made by the
manufacturer, producer, or importer
upon the return of the first article con-
stitutes a price readjustment of the
sale price of first article and the ex-
tent, if any, to which a credit may be
allowed, or refund made, of the tax
paid by the manufacturer, producer, or
importer on the sale of the first article.

(c) Readjustments in sale price. Read-
justment in sale price (such as allow-
able discounts, rebates, bonuses, etc.)
cannot be anticipated. The tax must be
based upon the original price unless
the readjustments have actually been
made prior to the close of the period
for which the tax upon the sale is re-
turned. However, if the price upon
which the tax was computed is subse-
quently readjusted, credit may be
taken against the tax due on a subse-
quent return or a claim for refund filed