

For example, if a producer of coal converts coal into gasoline which the producer then sells, the producer is liable for the coal excise tax when the coal is converted into gasoline and also liable for the manufacturer's excise tax on gasoline when the gasoline is sold.

(d) *Definitions and special rules*—(1) *Coal produced from surface mine.* Coal is treated as produced from a surface mine if all of the geological matter (e.g., trees, earth, rock) above the coal is removed before the coal is mined. In addition, both coal mined by auger and coal that is reclaimed from coal waste refuse piles are treated as produced from a surface mine.

(2) *Coal produced from underground mine.* Coal is treated as produced from an underground mine if it is not produced from a surface mine.

(3) *Coal used by the producer.* For purposes of this section, the term "coal used by the producer" means use by the producer in other than a mining process. A mining process is determined the same way it is determined for percentage depletion purposes. For example, a producer who mines coal does not "use" the coal and thereby becomes liable for the tax merely because, before selling the coal, the producer breaks it, cleans it, sizes it, or applies one of the other processes listed in section 613(c)(4)(A) of the Code. In such a case, the producer will be liable for the tax only when he sells the coal. On the other hand, a producer who mines coal does become liable for the tax when he uses the coal as fuel, as an ingredient in making coke, or in another process not treated as "mining" under section 613(c).

(4) *Tonnage sold and sales price.* For purposes of determining both the amount of coal sold by a producer and the sales price of the coal, the point of sale is f.o.b. mine, or f.o.b. cleaning point if the producer cleans the coal before selling it. This is true even if the producer sells the coal on the basis of a delivered price. Accordingly, f.o.b. mine or cleaning point is the point at which the number of tons sold is to be determined for purposes of applying the applicable tonnage rate, and the point at which the sales price is to be determined for purposes of the tax under the 2 percent rate.

(5) *Constructive sale price.* If a producer uses coal mined by the producer in other than a mining process, a constructive sale price must be used in determining the tax under the 2 percent rate. This constructive price is determined under sections 613(c) and 4218(e) of the Code, and is based on sales of like kind and grade of coal by the producer or other producers made f.o.b. mine (if the coal is used without first being cleaned) or f.o.b. cleaning plant (if the coal is cleaned before it is used). Normally, this constructive price will be the same as the constructive price used in determining the producer's percentage depletion deduction.

[T.D. 7726, 45 FR 66453, Oct. 7, 1980; 45 FR 69214, Oct. 20, 1980; T.D. 8448, 57 FR 48186, Oct. 22, 1992]

### Subpart J [Reserved]

### Subpart K—Sporting Goods

SOURCE: Sections 48.4161(a)-1 through 48.4161(b)-5 contained in T.D. 7328, 39 FR 36586, Oct. 11, 1974 unless otherwise noted. Sections 48.4181-1 through 48.4182-2 contained in T.D. 6454, 25 FR 1774, Mar. 1, 1960, unless otherwise noted.

#### § 48.4161(a) [Reserved]

#### § 48.4161(a)-1 Imposition and rate of tax; fishing equipment.

(a) *Imposition of tax.* Section 4161(a) imposes a tax on the sale of the following articles of fishing equipment (including in each case parts or accessories of such articles sold on or in connection therewith or with the sale thereof) by the manufacturer, producer, or importer thereof:

- (1) Fishing rods;
- (2) Fishing creels;
- (3) Fishing reels; and
- (4) Artificial lures, baits, and flies.

The tax applies only to those items of fishing equipment specified in section 4161(a) and this paragraph. Therefore, other items of fishing equipment, such as fishing nets, lines, hooks, sinkers, gaffs, etc., are not subject to the tax. Furthermore, the tax applies only to those specified articles of fishing equipment that are designed or constructed for use in the sport of fishing. Accordingly, the tax does not apply to

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those articles which, although nominally articles that are specified in section 4161(a), are in the nature of toys or novelties that merely simulate articles of a type referred to in section 4161(a), and are not designed or constructed for practical use in the sport of fishing.

(b) *Rate of tax.* Tax is imposed on the sale of the articles enumerated in section 4161(a) and paragraph (a) of this section at the rate of 10 percent of the price for which such articles are sold. For the definition of the term “price” see section 4216 and the regulations thereunder.

(c) *Liability for tax.* The tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0-2(a)(4).

[T.D. 7328, 39 FR 36586, Oct. 11, 1974, as amended by T.D. 8043, 50 FR 32014, Aug. 8, 1985]

### § 48.4161(a)-2 Meaning of terms.

(a) *Fishing rods.* The term “fishing rods” includes all articles, however, designated, that are designed or constructed for use in conjunction with a fishing reel for casting a line and hook in the sport of fishing. The term does not include any article that is neither designed for use in casting, nor suitable for such use. A so-called fishing rod “blank” is not considered to be a “fishing rod” unless the blank contains an affixed handle and reel seat, or is sold in the form of a kit that contains a rod blank, a handle, and a reel seat.

(b) *Fishing creels.* The term “fishing creels” includes all portable containers, of whatever material made, that are designed for storing and carrying fish from the time they are caught until such time as they are removed from the container for consumption or preservation. The term does not include any article primarily designed for use in the commercial fishing industry, or an article such as a collapsible wire basket designed to be hung over the side of a boat to keep fish captive and alive in the water.

(c) *Fishing reels.* The term “fishing reels” includes all mechanical and electrical devices that contain a spool for dispensing and recovering fishing line, and are designed for use with fish-

ing rods in casting and in reeling in hooked fish in the sport of fishing. The term also includes reels designed for use with bows, in the sport of bowfishing.

(d) *Artificial lures, baits, and flies.* The term “artificial lures, baits, and flies” includes all artifacts, of whatever materials made, that simulate an article considered edible by fish and are designed to be attached to a line or hook to attract fish so that they may be captured. Thus, the term includes such artifacts as imitation flies, blades, spoons, and spinners, and edible materials that have been processed so as to resemble a different edible article considered more attractive to fish, such as bread crumbs treated so as to simulate salmon eggs, and pork rind cut and dyed to resemble frogs, eels, or tadpoles.

[T.D. 7328, 39 FR 36586, Oct. 11, 1974, as amended by T.D. 8043, 50 FR 32014, Aug. 8, 1985]

### § 48.4161(a)-3 Parts and accessories.

(a) *In general.* The tax attaches with respect to parts and accessories for articles specified in section 4161(a) and § 48.4161(a)-1 that are sold on or in connection with such articles, or with the sale thereof, at the same rate applicable to the sale of the basic articles. The tax attaches in such cases whether or not charges for the parts or accessories are billed separately. To be considered a part or accessory for an article specified in section 4161(a), an item must be either essential to the operation of the specified article, or be designed to directly improve the performance of the specified article, or to improve its appearance. For example, a carrying case for a fishing rod is not considered to be a part or accessory for a fishing rod, despite the fact that it is designed for use with the rod, because it is neither essential to the use of the rod, nor does it in any way improve its performance or appearance. A sale of a part or accessory which would otherwise be considered a sale “on or in connection with” the sale of an article taxable under section 4161(a), is not subject to tax if the part or accessory is sold as a replacement for an identical part or accessory being sold with the taxable article.