must reflect the inclusions and exclusions set forth in sections 4216(a) and (e) of the Code, and any price adjustments described in section 6416(b)(1) of the Code.

(2) Highest price to wholesale distributors. The “highest price” charged wholesale distributors for an article by a manufacturer, producer, or importer thereof, is the highest price at which the manufacturer, producer, or importer sells the article to wholesale distributors, determined without regard to quantity. Such price shall be determined in the same manner as sale price is determined for a taxable sale with respect to the inclusions and exclusions under sections 4216(a) and (e) of the Code; however, since the price is to be a “highest” price, no further adjustment may be made for price readjustments under section 6416(b)(1) of the Code.

(3) Regular sales. An article is considered to be sold “regularly” at retail or to retailers if sales are made at retail or to retailers periodically and recurring as a regular part of the seller’s business. If a seller makes only isolated or casual sales of an article at retail or to retailers, it is not considered to be selling “regularly” at retail or to retailers. Similarly, a manufacturer is considered to be making regular sales of an article to one or more distributors if it sells the article to at least one distributor periodically and recurring as a regular part of its business.

(4) Normal method of sales in industry. In the absence of a showing to the appropriate TTB officer of a more appropriate manner of determining the normal method of sales within an industry which is practical in application, the normal method of sales within an industry shall be regarded as not being at retail or to retailers, or both, if the industry dollar volume of sales which are at retail or to retailers, or both, is less than half the total industry dollar volume of sales at all levels of distribution by manufacturers, producers, or importers, including sales to other manufacturers, producers, or importers.


§ 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.

(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 instances 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.