

INTERNAL REVENUE SERVICE

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In re:

Legend:

Taxpayer	=
TPV	=
Seller	=

Dear

This is in response to a request for private letter ruling dated October 25, 1999, and subsequent correspondence, made on behalf of Taxpayer by its authorized representative, requesting whether the appropriate constructive sale price for articles that Taxpayer manufactures is the price at which Taxpayer purchases the same articles from a third party vendor ().

Taxpayer, a distributor of taxable sport fishing equipment, recently acquired the equipment, inventory, and building previously owned by Seller, a manufacturer of sport fishing equipment from whom Taxpayer formerly bought products. Taxpayer now manufactures the same taxable equipment that it purchases from . Taxpayer sells the equipment to retailers for sale to end users, to two-step stocking distributors and wagon jobbers (wholesale distributors), and to end users via catalogs and e-commerce.

Section 4161(a) of the Internal Revenue Code imposes on the sale by the manufacturer, producer, or importer of articles of sport fishing equipment a tax equal to 10 percent of the price for which the articles are sold.

Generally, the basis for computing the manufacturers excise tax is the actual selling price of the article. If, however, an article is sold at retail, on consignment, or otherwise than in an arm's-length transaction at less than fair market value, the tax must be based on a constructive sale price determined under § 4216(b).

Section 4216(b)(1) provides that where an arm's-length sale at retail is made by the manufacturer, the manufacturers excise tax is computed based on the lower of the

price for which the article is sold or the highest price for which the article is sold to wholesale distributors in the ordinary course of trade by manufacturers or producers as determined by the IRS. This paragraph shall not apply if paragraph (2) applies.

Section 4216(b)(2) provides a special rule under which the constructive sale price for sales at retail or to retailers is computed when the conditions contained therein are met. The section provides, in part, that if an article is sold at retail or to a retailer, and if the manufacturer of the article regularly sells the articles at retail or to retailers, and also regularly sells the articles to one or more wholesale distributors in arm's-length transactions, then the constructive sale price will be the lower of (1) the price for which the articles are sold, or (2) the highest price for which the articles are sold by the manufacturer to wholesale distributors.

Section 48.4216(b)-1(c)(1) of the Manufacturers and Retailers Excise Tax Regulations defines a retail sale as a sale of an article to a purchaser who intends to use or lease the article rather than resell it. Section 48.4216(b)-1(c)(2) defines a retail dealer or retailer as a person engaged in the business of selling articles at retail. Section 48.4216(b)-1(c)(3) defines a wholesale distributor as a person engaged in the business of selling articles to persons engaged in the business of reselling the articles.

Revenue Ruling 81-226, 1981-2 C.B. 213, modifying Revenue Ruling 80-273, 1980-2 C.B. 350, provides that the constructive sale price for computing the manufacturers excise tax imposed by § 4161(a), when the articles are sold at retail by manufacturers who do not sell like articles to wholesale distributors, is 60 percent of the actual selling price.

Revenue Ruling 81-73, 1981-1 C.B. 501, holds that in computing the tax on retail sales, a manufacturer may use the highest price for which it sells similar articles to wholesale distributors, provided it has an established bona fide practice of selling the articles in substantial quantities to those distributors. Where it is not shown that a manufacturer has a bona fide practice of selling articles in substantial quantities to wholesale distributors, a constructive sale price will be determined by the Commissioner.

Taxpayer may only establish the price upon which the tax is based after answering the following questions. (1) To whom is the item being sold (the purchaser)? (2) To whom, if anyone, is the purchaser selling? (3) Does Taxpayer regularly sell the articles at arm's length at retail or to retailers? (4) Does Taxpayer regularly sell at arm's length substantial quantities of the articles to wholesale distributors?

The taxable sale price of an article manufactured and sold by Taxpayer at retail when Taxpayer does not regularly sell the same article to wholesale distributors at arm's length is 60 percent of the actual sale price of the article. If Taxpayer does regularly sell the same article to wholesale distributors, the sale price of the article sold at retail is the lower of the price for which the item is sold or the highest price for which the article is sold to wholesale distributors.

The taxable sale price of an article manufactured and sold by Taxpayer to a retail dealer when the same article is not regularly sold at arm's length to wholesale distributors

is the actual price for which the article is sold. The taxable sale price of an article manufactured and sold by Taxpayer to retail dealers, when Taxpayer regularly sells the same article to wholesale dealers is the lower of the price for which the article is sold or the highest price of the same article sold to wholesale distributors.

The taxable sale price of an article manufactured and sold by Taxpayer to a wholesale distributor is the actual price for which the article is sold. Under any circumstance, the actual price for which an article is sold must be determined in accordance with § 4216(a).

There is no provision of law that would allow Taxpayer to construct a sale price on the sport fishing equipment that it manufactures in the way Taxpayer has suggested. Accordingly, the price at which Taxpayer purchases the same articles from not the appropriate constructive sale price for Taxpayer to use.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it shall not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By:

Richard Kocak
Chief, Branch 8

Enclosures (2):

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