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26 CFR 48.4218-1: Tax on use by manufacturer, producer, or importer.
(Also Section 4141; 48.4141-1.)

1963-2 C.B. 534; 1963 IRB LEXIS 106; REV. RUL. 63-256July, 1963

CORE TERMS: manufacturer, excise tax imposed, computed, importer, display, demonstrator, manufacture, producer, radio, ordinary course of trade, excise tax, typewriters, television, exhibition, displayed, delegate, phonographs, retail

Rev. Rul. 63-256

Section 4218. - USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE

Under the provisions of section 4218(a) of the Internal Revenue Code of 1954, a corporation which places taxable radio and television receiving sets, phonographs, and combinations thereof, on display in its exhibition halls, or in the homes or offices of its executives, is liable for the manufacturers excise tax imposed by section 4141 of the Code. Moreover, the tax must be computed under the provisions of section 4218(e) of the Code.

Advice has been requested whether the principles set forth in *Revenue Ruling 60-290*, C.B. 1960-2, 331, relating to the use of taxable typewriters as demonstrators, are applicable under the circumstances described below.

A corporation manufactures and sells radio and television receiving sets, phonographs, and combinations thereof which are subject to the manufacturers excise tax imposed by section 4141 of the Internal Revenue Code of 1954.

The corporation maintains exhibition halls where its products are put on display for the public. Only a small portion of the articles displayed are actually turned on and operated. In addition, the corporation places some of its products in the homes and offices of its executives for display purposes or so that they may familiarize themselves 535 with current models of the company's products. As new models are produced by the corporation, the prior models are replaced. The models so put to use by the company are then sold at retail for prices which approximate the established wholesale distributor price, but vary depending upon the condition of the particular article being sold.

Section 4218(a) of the Code provides, in part, that if any person manufactures, produces, or imports an article (other than specified articles not involved herein) and uses it (otherwise than as material in the manufacture or production of, or as a component part of another taxable article to be manufactured or produced by him), then he shall be liable for the manufacturers excise tax in the same manner as if such article were sold by him.

Section 4218(e) of the Code provides, in part, that in any case in which a person is made liable for tax by the provisions of section 4218(a) of the Code, the tax (if based on the price for which the article is sold) shall be computed upon the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as

determined by the Secretary of the Treasury or his delegate.

The question presented is whether the use of a taxable article under the circumstances here involved constitutes the "use" of such article within the meaning and intent of section 4218 of the Code, so as to create liability for the manufacturers excise tax at the time the article is put to use in the manner indicated. Alternatively, if this is not a taxable use of the article, there remains the question of the liability of the manufacturer for the tax at the time of the retail sale of the article after it has been used for the purposes described.

Revenue Ruling 60-290 provides that the use of a taxable business machine as a demonstrator by the manufacturer, producer, or importer thereof, in the operation of a business in which he is engaged, makes such person liable, under the provisions of section 4218(a) of the Code, for the manufacturers excise tax imposed by section 4191 of the Code, in the same manner as if the business machine were sold by him. It further provides that the liability for such tax is incurred at the time the demonstrator is placed in use, and the tax must be computed under the provisions of section 4218(e) of the Code.

The articles in the instant case are used in the operation of the corporation's business in a manner similar to the typewriters involved in *Revenue Ruling 60-290,* irrespective of whether they are actually operated while on display. Therefore, it is concluded that the principles set forth in that Revenue Ruling are equally applicable to the use of the radio receiving sets, etc., which are displayed in the manner described in this case.

Accordingly, it is held that the corporation is liable, under the provisions of section 4218(a) of the Code, for the manufacturers excise tax imposed by section 4141 of the Code. Moreover, liability for such tax is incurred at the time these articles are first placed in use, rather than upon the subsequent sale thereof. Therefore, the tax must be computed upon the price at which such or similar articles are sold in the ordinary course of trade by manufacturers, producers, or importers, thereof, as determined by the Secretary or his delegate, as provided by section 4218(e) of the Code. *Rev. Rul. 63-256RR*