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EXCLUSION OF LOCAL ADVERTISING CHARGES FROM MANUFACTURERS' SALES PRICE

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Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 12536]

The Committee on Finance, to whom was referred the bill (H.R. 12536) relating to the treatment of charges for local advertising for purposes of determining the manufacturers' sale price, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY OF BILL

This bill provides that where a manufacturer (or producer or importer) of articles subject to manufacturers' excise tax makes a separate charge for local advertising of the article, or reimburses the retailer (or other distributor) for part or all of his expenses for local advertising of the articles (subject to certain limitations) this charge is to be excluded from the manufacturers' sales price, or this price is to be readjusted for this charge. Excluding this amount from the sales price, or readjusting this price for this amount, reduces the manufacturers' excise taxes which are payable since this price is the base for these taxes. The price exclusion, or readjustment, is limited to radio, television, and newspaper advertising and to not more than 5 percent of the sales price (excluding local advertising charges). This amendment is to apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of enactment of this bill.

The Treasury Department has indicated that it does not object to the enactment of this bill.

II. GENERAL STATEMENT

This bill is concerned with the manner of determining the manufacturers' (or producers' or importers') sales price, which is the base on which various manufacturers' tax rates are applied. The problem is concerned with the treatment of certain local advertising expenses incurred by the retailer (or other distributor) of the taxed article where reimbursement is to be provided by the manufacturer (or producer or importer) for part or all of these expenses.

In 1932 the Internal Revenue Service ruled that specific additional charges billed by a manufacturer to a distributor for advertising were to be excluded from the sales price for purposes of the manufacturers' excise tax if it could be established that the value of the advertising equals or exceeds the amount collected from a customer. In addition, this had to be shown separately on the invoices in order to be excluded in computing the tax and was limited to local advertising.[1] From 1932 to 1956 the Internal Revenue Service also issued numerous private rulings permitting readjustments of sales price for local advertising expenses incurred by the retailer (or other distributor).

Then in 1956 the Forand Subcommittee on Excise Tax Technical and Administrative Problems, in one of its reports to the House Committee on Ways and Means, indicated that it had been informed that the Internal Revenue Service was planning to issue a ruling with respect to cooperative advertising providing that, where a manufacturer makes a separate charge to his distributor for advertising and the proceeds are kept in a separate account earmarked for advertising, the separate advertising charge is not to be considered a part of the tax base. It was further stated that the separation of the advertising charge (and, therefore, its exclusion from the tax base) could be supported by establishing that the charge was either listed separately on the sales invoice or billed separately; the contributions from the distributor were set aside in a fund to be used for advertising for the benefit of the contributors; and the funds were so used, or the unexpended portion was held in trust or refunded to the contributor upon his withdrawal from the program.[2] In addition, the Internal Revenue Service had indicated that, although direct contributions by manufacturers to an advertising account were not to be deductible in computing the taxable sales price, subsequent allowances, against these contributions, to distributors for advertising expenditures by them were to be treated as adjustments in sales price.

The Commissioner of Internal Revenue in December of 1956 indicated, however, that the Service did not feel it was in a position to go forward with the publication of the ruling previously discussed.[3] Subsequently in 1958, the Treasury Department in a regulation denied taxpayers an exclusion from, or readjustment of, the sales price for advertising charges or expenditures.[4]

A number of taxpayers who had entered into cooperative advertising arrangements with their distributors instead of securing specific rulings

[1] S.T. 523, C.B. XI-2, 477. See also, S.T. 430, C.B. II-2, 300 (1923).

[2] Subcommittee on Excise Tax Technical and Administrative Problems, report to the House Committee on Ways and Means, 84th Cong., 2d sess., Apr. 20, 1956, pp. 22-23. A Treasury Department representative previously had made a similar statement in hearings before the subcommittee in January of 1956; see hearings before a subcommittee on the Committee on Ways and Means, U.S. House of Representatives, "Excise Tax Technical and Administrative Problems," 84th Cong., 2d sess., pt. II, pp. 15 and 57-59.

[3] Hearings before a subcommittee of the Committee on Ways and Means, U.S. House of Representatives, "Excise Taxes," 84th Cong., 2d sess., November and December 1956, pp. 922-923.

[4] T.D. 6340, 23 F.R. 9692-9693. The proposed regulation was issued on Mar. 22, 1958, and the final regulation on Dec. 16, 1958.

applying to their own cases had relied upon information generally available to the effect that these cooperative advertising charges were excludible from the base on which the manufacturers' excise tax rates were applied, or that price adjustments attributable to such charges would result in refunds of tax.

A recent court case on this problem, *General Motors Corp.* v. *United States*, was decided by the Court of Claims on May 4, 1960 (No. 236–56). The court held in this case that the taxpayer properly could readjust its sales price for articles sold to the extent of the amount it paid dealers of its products for the cost of many different types of local advertising under a cooperative advertising plan.

Your committee concluded that due to the confusion as to the status of advertising charges, in determining manufacturers' sales prices, there was need for statutory clarification, as well as some limitations as to the extent to which such exclusions or adjustments should be allowed. Your committee concluded that it is appropriate to exclude from the manufacturers' sales price a reasonable amount of local advertising where the advertising is under the control of the distributor. Such advertising appears to be an expense traditionally incurred by the distributor rather than by the manufacturer and, therefore, more appropriately reflected in the retail distributor's price rather than in the manufacturer's price. This, of course, distinguishes such advertising charges from national advertising which customarily is a part of the manufacturers' own costs. Excluding such reasonable local advertising charges from the base of the various manufacturers' excise taxes in your committee's view also is desirable in that it provides greater uniformity in the application of manufacturers' excise taxes.

III. GENERAL EXPLANATION OF BILL

The bill provides that there is to be excluded from the sales price, for purposes of computing various manufacturers' excise taxes (sec. 4216), any charge for local advertising where certain conditions are met.

First, the charge may be excluded only to the extent it is not in excess of 5 percent of the manufacturers' price for the article (determined by excluding any local advertising charge). Second, a separate charge must be made for the advertising at the time the article is sold, and, third, it must be intended that the advertising charge be refunded to the purchaser from the manufacturer (or any subsequent purchaser) in reimbursement for local advertising. Unless the reimbursement occurs before May 1 of the next year the charge previously excluded is to be subject to tax. In addition, the excludable local advertising charge is limited to radio, television, or newspaper advertising, and to advertising which states the name of the article and the retail sales location at which the article involved may be purchased. No other charges for advertising are to serve as the basis for an exclusion from, or readjustment of, the sales price of an article. Also, the advertising must be initiated, or obtained, by the immediate purchaser of the article (or any subsequent purchaser) rather than by the manufacturer, producer, or importer.

The bill also amends the code (sec. 6416(b)) to provide that taxes paid with respect to charges for local advertising (as above defined) are to constitute overpayments and where the applicable conditions

are met that credit or refund of tax attributable to these charges is to be available.

The 5-percent ceiling in the case of local advertising is computed at the end of each calendar quarter on a cumulative basis. However, any advertising charges which may not be deducted in the calendar quarter or quarters which have elapsed to date may be carried over to a subsequent calendar quarter in the same year and, to the extent such charges, together with any similar charges attributable to this subsequent calendar quarter, do not exceed the 5-percent limitation for such quarter, they may be deducted at that time. This 5-percent ceiling takes into account not only amounts initially excluded from the sales price but also readjustments in the sales price (under sec. 6416(b)) as well.

The exclusions, or readjustments, in price with respect to local advertising allowed by this bill are, from the effective date of the bill, to be the only exclusions or readjustments for advertising allowed in computing the price of articles subject to excise tax.

The amendments made by this bill are to apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of enactment of this bill.

IV. TECHNICAL EXPLANATION OF BILL

The first section of the bill amends section 4216 of the Internal Revenue Code of 1954 by adding a new subsection (f). Section 4216 defines sale price for purposes of those manufacturers excise taxes which are based on sale price. Paragraph (1) of the new subsection (f) provides an exclusion from the sale price of any article for certain charges made by the manufacturer for "local advertising," as defined in paragraph (4) of the new subsection (f). "Local advertising," as so defined, means advertising which—

(1) Is initiated or obtained by the person who made a direct purchase from the manufacturer of the article in respect of which the charge was made, or any other person in the chain of distribution of the article.

(2) Names the article so purchased and states the location at which it may be purchased at retail. The location need not be stated specifically in terms of street address and number, provided it is described sufficiently to enable consumers to identify the particular place at which they may purchase the article.

(3) Is broadcast over a radio station or a television station, or appears in a newspaper.

The exclusion from sale price of a taxable article, as provided in paragraph (1) of the new subsection (f) of section 4216 of the code, will apply to the extent that—

(1) The charge for local advertising of the article is separately stated when the article is sold.

(2) The charge does not exceed an amount computed by applying 5 percent against the sale price of the article, as determined under section 4216 exclusive of any charge for local advertising, whatever the amount of such charge may be. Any excess of such charge over the amount so computed will not qualify for the exclusion.

(3) The charge is intended to be refunded by the manufacturer to the person who purchased the article from him, or to any sub-

sequent purchaser in the chain of distribution, in reimbursement of costs incurred for local advertising.

To the extent that a charge for local advertising meets all of these conditions, the charge is not includible in the taxable sale price of the article in respect of which the charge was made. However, the exclusion from sale price will cease to apply in respect of any part of such charge which the manufacturer, producer, or importer fails to refund, before May 1 of the year following the calendar year in which the article was sold, to the person who purchased the article from him or to any subsequent purchaser in the chain of distribution. If, on such May 1, any part of the charge has not been so refunded, the manufacturer, producer, or importer becomes liable for the tax at that time in respect of such part.

The exclusion provided in paragraph (1) of the new subsection (f) in respect of charges for local advertising, and the credits or refunds which may be claimed under section 6416(b)(1) of the code as amended by section 2 of the bill, in respect of certain payments by the manufacturer, producer, or importer for local advertising, are subject to an overall limitation as provided in paragraph (2) of the new subsection (f). The limitation is to be applied as of the close of each calendar quarter in relation to all articles taxable under a particular section of the code. For example, a manufacturer selling articles taxable under section 4061 of the code (relating to motor vehicles) and also selling articles taxable under section 4111 of the code (relating to refrigeration equipment) who makes local advertising charges or expenditures in respect of any one or more articles in each of the groups must apply the limitation separately in relation to the articles taxable under section 4061 and in relation to the articles taxable under section 4111. However, in such case, no breakdown of the separate articles taxable under section 4061 or section 4111 is required.

The limitation in relation to articles taxable under a particular section of the code is determined by applying 5 percent against the total of the taxable sale prices (determined under sec. 4216 exclusive of all charges for local advertising) of such articles sold in the calendar quarter. This limitation should be compared with the total of the price exclusions for local advertising taken by the manufacturer, producer, or importer in such quarter in respect of such articles. To the extent that the limitation exceeds the total of such price exclusions, credit or refund may be claimed by the manufacturer, producer, or importer in respect of tax paid on amounts (previously included in taxable sale price of such articles) which are paid by him in the calendar quarter, to persons who purchased such articles directly from him, in respect of costs for local advertising. If such quarter is not the first calendar quarter in the calendar year in respect of which price exclusions may be taken or credit or refund may be claimed in respect of local advertising of the articles, the maximum amount of the credit or refund allowable in respect of such advertising should be computed by taking into account the price exclusions attributable to such articles sold in the earlier quarter or quarters of the calendar year and the total sale prices (determined as previously indicated) of such articles sold in such earlier quarter or quarters. In such case, however, the maximum amount of the credit or refund so computed must be reduced by the amount of any credit or refund previously claimed by the manufacturer, producer, or importer in respect of amounts (in-

cluded in taxable sale price) paid to his purchaser in such year for local advertising of such articles. The sale prices of articles sold tax free by the manufacturer may not, in any event, be included in the computation. However, no adjustment of such sale prices is required, for purposes of the computation, in respect of credits or refunds attributable to articles sold by a distributor, dealer, etc., for an exempt purpose, or in respect of price readjustments for quantity buying, prompt payment, etc.

The operation of this ceiling may be illustrated as follows: Assume that a manufacturer during the first calendar quarter of 1961 sold refrigerators at a total price of $105,000, of which $5,000 was a separate charge for local advertising as defined in the bill and that this $5,000 was subsequently paid to the vendees as reimbursement for their local advertising charges. Subsequently, during the same quarter, assume that the manufacturer refunded an additional $10,000 to the vendees for additional local advertising as defined in the bill. Under the new section 4216(f)(1) of the Code, added by the bill, the manufacturer's excise tax base is reduced by $5,000 (5 percent of the aggregate price of the refrigerators, exclusive of the separate charge for local advertising). Since this reduction amounts to 5 percent of the price (determined by excluding all charges for local advertising) at which the refrigerators were sold, no credit or refund in tax can be made at the close of the first quarter of 1961 with respect to the additional $10,000. Assume that the same manufacturer in the second quarter of 1961 also sold refrigerators the total price of which was $52,500 of which $2,500 of this price was a separate charge for local advertising as defined in the bill. For this second calendar quarter the manufacturer would reduce his tax base by $2,500. If in the third calendar quarter the manufacturer sold no refrigerators, then for this third quarter he would be entitled to no credit for local advertising expenses even though there remained an excess of local advertising expenses from the first calendar quarter of 1961. In the fourth calendar quarter of 1961 assume this manufacturer sold refrigerators the total price of which was $200,000, no part of which was a separate charge for local advertising. The operation of the 5-percent ceiling of the new section 4216(f)(2) of the code would entitle him in this fourth quarter to a readjustment in the manufacturers' sale price in the amount of $10,000 for the local advertising payments made to his vendees in the first quarter of 1961 which in that quarter exceeded the 5-percent ceiling.

If this manufacturer by April 30, 1962, had reimbursed his vendees for local advertising only for $1,500 of the $2,500 excluded from price during the second quarter of 1961, then this manufacturer would become liable on May 1, 1962, for a tax of 5 percent (the tax on the sale by the manufacturer, etc., of refrigerators under sec. 4111) on the $1,000 not reimbursed to his vendees, as though a sale in that amount had been made on May 1, 1962.

Paragraph (3) of the new subsection (f) of section 4216 of the code provides that no charge or expenditure for advertising shall serve as the basis for an exclusion from sale price under section 4216, or as a readjustment of sale price under section 6416(b)(1), except to the extent provided in paragraphs (1) and (2) of the new subsection (f).

Section 2 of the bill amends section 6416(b)(1) of the code to specify that tax-paid amounts which are paid by a manufacturer, producer, or

importer, to a person who has purchased the article directly from him, in respect of costs for local advertising are readjustments of sales price under such section. However, any such readjustment is subject to the limitations provided in paragraphs (2) and (3) of the new subsection (f) of section 4216 of the code.

Section 3 of the bill provides that the amendments made by the bill shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of enactment of the bill.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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SEC. 4216. DEFINITION OF PRICE.

(a) CONTAINERS, PACKING AND TRANSPORTATION CHARGES.—In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary or his delegate in accordance with the regulations.

(b) CONSTRUCTIVE SALE PRICE.—

(1) IN GENERAL.—If an article is—

(A) sold at retail,

(B) sold on consignment, or

(C) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate. This paragraph shall not apply if paragraph (2) applies.

(2) SPECIAL RULE.—If an article is sold at retail, to a retailer, or to a special dealer (as defined in paragraph (3)), and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail, to retailers, or to special dealers, as the case may be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors (other than special dealers) in arm's length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph,

(C) the normal method of sales for such articles within the industry is not to sell such articles at retail or to retailers, or combinations thereof, and

(D) the transaction is an arm's length transaction.

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

(3) SPECIAL DEALER.—For purposes of paragraph (2), the term "special dealer" means a distributor of articles taxable under section 4121 who does not maintain a sales force to resell the article whose constructive price is established under paragraph (2) but relies on salesmen of the manufacturer, producer, or importer of the article for resale of the article to retailers.

(c) PARTIAL PAYMENTS.—In the case of—

(1) a lease (other than a lease to which section 4217(b) applies),

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sale, or

(4) a chattel mortgage arrangement wherein it is provided that the sales prices shall be paid in installments,

there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

[Sec. 4216(d)—Repealed.]

(e) SALES OF INSTALLMENT ACCOUNTS.—If installment accounts, with respect to payments on which tax is being computed as provided in subsection (c), are sold or otherwise disposed of, then subsection (c) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with respect to which credit or refund is allowable by reason of section 6416(b)(5)), but instead—

(1) there shall be paid an amount equal to the difference between (A) the tax previously paid on the payments on such installment accounts, and (B) the total tax; except that

(2) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under paragraph (1) shall not exceed the amount computed by multiplying (A) the amount for which such accounts are sold, by (B) the rate of tax

under this chapter which applied on the day on which the transaction giving rise to such installment accounts took place.

The sum of the amounts payable under this subsection and subsection (c) in respect of the sale of any article shall not exceed the total tax.

(f) EXCLUSION OF LOCAL ADVERTISING CHARGE FROM SALE PRICE.—

(1) EXCLUSION.—In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) AGGREGATE AMOUNT WHICH MAY BE EXCLUDED.—In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) the sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) NO ADJUSTMENT FOR OTHER ADVERTISING CHARGES.—Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

(4) LOCAL ADVERTISING DEFINED.—For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station or appears in a newspaper.

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SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) CONDITION TO ALLOWANCE.—* * *

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(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—If the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, *including (in the case of a tax imposed by chapter 32) a readjustment for local advertising (but only to the extent provided in section 4216(f) (2) and (3))*, the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) SPECIFIED USES AND RESALES.—The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported (except in any case to which subsection (g) applies);

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) resold to a manufacturer or producer for use by him as provided in subparagraph (A), (B), or (E) of paragraph (3);

(F) in the case of a tire, inner tube, or receiving set, resold for use as provided in subparagraph (C) or (D) of paragraph (3) and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

(G) in the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes;

(H) In the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter in vehicles while engaged in

furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 percent passenger fare revenue test set forth in section 6421(b)(2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's tax-exempt passenger fare revenue (as defined in section 6421(d)(2)) derived from such scheduled service during such quarter was of his total passenger fare revenue (not including the tax imposed by section 4261, relating to the tax on transportation of persons) derived from such scheduled service during such quarter;

(I) in the case of a liquid in respect of which tax was paid under section 4041(a)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) in the case of a liquid in respect of which tax was paid under section 4041(b)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(K) in the case of any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a));

(L) in the case of tread rubber in respect of which tax was paid under section 4071(a)(4), used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)), unless credit or refund of such tax is allowable under subsection (b)(3);

(M) in the case of gasoline, used or sold for use in production of special motor fuels referred to in section 4041(b);

(N) in the case of lubricating oil, used or sold for nonlubricating purposes;

(O) in the case of lubricating oil in respect of which tax was paid at the rate of 6 cents a gallon, used or sold for use as cutting oils (within the meaning of section 4092(b)); except that the amount of such overpayment shall not exceed an amount computed at the rate of 3 cents a gallon;

(P) in the case of any musical instrument taxable under section 4151, sold to a religious institution for exclusively religious purposes;

(Q) In the case of unexposed motion picture film, used or sold for use in the making of newsreel motion picture film.

(3) TAX-PAID ARTICLES USED FOR FURTHER MANUFACTURE, ETC.—If the tax imposed by chapter 32 has been paid with respect to the sale of any article by the manufacturer, producer, or importer thereof to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if—

(A) in the case of any article other than an article to which subparagraph (B), (C), (D), or (E) applies, such article is used by the second manufacturer or producer as material in the manufacturer or production of, or as a component part of, another article taxable under chapter 32 manufactured or produced by him;

(B) in the case of—

(i) a part or accessory taxable under section 4061(b),

(ii) a radio or television component taxable under section 4141, or

(iii) a camera lens taxable under section 4171,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

(C) in the case of—

(i) a tire or inner tube taxable under section 4071, or

(ii) an automobile radio or television receiving set taxable under section 4141,

such article is sold by the second manufacturer or produced on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(D) in the case of a radio receiving set or an automobile radio receiving set—

(i) such set is used by the second manufacturer or producer as a component part of any other article manufactured or produced by him, and

(ii) such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft; or

(E) in the case of—

(i) a bicycle tire (as defined in section 4221(e)(4)(B)), or

(ii) an inner tube for such a tire,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle).

For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

(4) TIRES, INNER TUBES, AND AUTOMOBILE RADIO AND TELEVISION RECEIVING SETS.—If—

(A)(i) a tire or inner tube taxable under section 4071, or automobile radio or television receiving set taxable under section 4141, is sold by the manufacturer, producer, or importer thereof on o in connection with, or with the sale of, any other article manufactured or produced by him, or

(ii) a radio receiving set or an automobile radio receiving set is used by the manufacturer thereof as a component part of any other article manufactured or produced by him; and

(B) such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft,

any tax imposed by chapter 32 in respect of such tire, inner tube, or receiving set which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

(5) RETURN OF CERTAIN INSTALLMENT ACCOUNTS.—If—

(A) tax was paid under section 4053(b)(1) or 4216(e)(1) in respect of any installment account,

(B) such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) the consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4053(b)(1) or 4216(e)(1) proportionate to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

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