

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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June 27, 2014

LEGEND:

Taxpayer =

Device =

X% =

Plan =

Period =

Payment =

Dear :

This letter responds to a private letter ruling request dated December 6, 2013, requesting rulings under §§ 4216 and 4217 of the Internal Revenue Code (the Code).

FACTS

Taxpayer manufactures Device. Device is a taxable medical device within the meaning of § 4191(b). Taxpayer's domestic distribution model for Device is to lease Device directly to end users.

Approximately X% of the end users to which Taxpayer leases Device pay through Plan. When an end user who pays through Plan leases a Device for Period, title to Device transfers to the end user, as required by Plan rules. The total amount that Taxpayer receives when it leases Device to the end user for Period is Payment.

RULINGS REQUESTED

Taxpayer requests the following rulings:

1. Whether Taxpayer may apply the tax limitation provided by § 4217(b) to its Device leases when calculating § 4191 tax liabilities arising from the leases.
2. Whether, for purposes of calculating the total tax under § 4217(c) and § 48.4217-2(e) of the Regulations, the constructive sale price that is determined under § 4216(b) (as if the leased article had been sold at retail on the date of the first lease of the article to which § 4217(b) applies) may be based on Payment.

LAW

Section 4191(a) imposes a tax on the sale of any taxable medical device by the manufacturer, producer, or importer of 2.3 percent of the price for which the device was sold.

Section 4216 defines the price for which an article is sold for purposes of the taxes imposed by chapter 32 of the Code. Section 4216(b)(1) provides general rules for the sale of articles sold at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price.

Under § 4217(a), for purposes of chapter 32 of the Code, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer or importer shall be considered a sale of such article.

Section 4217(b) provides that in the case of any lease of a taxable article described in § 4217(a), if the tax under chapter 32 is based on the price for which such articles are sold, there shall be paid on each lease payment with respect to such article a percentage of such payment equal to the rate of tax in effect on the date of such payment, until the total of the tax payments under such lease and any prior lease to which § 4217(b) applies equals the total tax.

Section 4217(c) defines "total tax" to mean (1) except as provided in § 4217(c)(2), the tax computed on the constructive sale price for such article that would be determined under § 4216(b) if such article were sold at retail on the date of the first lease to which § 4217(b) applies; or (2) if the first lease to which § 4217(b) applies is not the first lease of the article, the tax computed on the fair market value of such article on the date of the first lease to which § 4217(b) applies.

Under § 48.4217-2(e), the term "total tax" is defined to mean the amount of tax, computed at the rate in effect on the date of the first lease of the article to which § 4217(b) applies, which would be due on the constructive sale price of the article as

determined under § 4216(b) and § 48.4216(b)-2 of the Regulations, as if the article had been sold by a manufacturer at retail on such date.

Section 4217(d)(1) restricts the application of § 4217(b) to situations where, at the time of making the lease, or any prior lease of such article to which § 4217(b) applies, the person making the lease or prior lease was also engaged in the business of selling in arm's length transactions the same type and model of article.

Section 48.4217-2(b) provides, in part, that a lessor will be regarded as being engaged in the business of selling in arm's length transactions the same type and model of an article as the one being leased if the lessor periodically and recurrently makes bona fide offers for sale of such articles in the regular course of operation of its business, which offers if accepted would constitute sales at arm's length.

Under § 48.4217-2(c), to qualify as the "same type and model of article," the article offered for sale must be an unused article essentially the same in size, design, and function as the article being leased.

ANALYSIS AND CONCLUSION

As noted above, the limitation in § 4217(d)(1) generally applies when the person making the lease was also engaged in the business of selling in arm's length transactions the same type and model of article.

In the present case, X% of the end users to whom Taxpayer leases Device pay through Plan. When an end user who pays through Plan leases Device for more than Period, Taxpayer transfers title to Device to the end user in accordance with Plan rules, thereby effectuating a sale of Device. The sale is at arm's length and the devices that Taxpayer sells in these transactions are the same type and model as the devices that Taxpayer leases to end users who do not pay through Plan. When Taxpayer leases Device to an end user who pays through Plan, Taxpayer essentially offers to sell Device to the end user in the event that the use continues beyond Period. Based on the foregoing, we conclude that Taxpayer was engaged in the business of selling in arm's length transactions the same type and model of article within the meaning of § 4217(d)(1) and § 48.4217-2(b) and (c). Therefore, Taxpayer may apply the tax limitation provided by § 4217(b) to its Device leases when calculating its § 4191 tax liabilities arising from the leases.

Because the limitation in § 4217(b) applies to the § 4191 tax liabilities arising from Taxpayer's Device leases, Taxpayer must pay tax on each lease payment with respect to Device until the total of the tax payments under the lease and any prior lease to which § 4217(b) applies equals the total tax. See § 4217(c) and § 48.4217-2(e) for the definition of "total tax." In the present case, Taxpayer receives Payment for a lease that results in the transfer of title to Device under Plan rules. As noted above, such transfer

of title effectuates a sale of Device. Thus, for purposes of determining the “total tax” under § 4217(b), we conclude that Taxpayer may calculate a constructive sale price for Device under the rules of § 4216(b) based on Payment received by Taxpayer.

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

Except as expressly ruled herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or article discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This private letter ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, the supporting material is subject to verification or examination.

Sincerely,

Stephanie Bland
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
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