

ATF Ruling 94-6

Facts.

Advice has been requested on whether the manufacturers excise tax on firearms and ammunition is imposed in the following situations. A manufacturer makes firearms and loans them to its employees or writers for trade publications. The employees receive the firearms for display or demonstration to prospective customers or to familiarize themselves with the firearms. The writers receive the firearms for the purpose of familiarization and technical evaluation. During the period the firearms are loaned, usually no more than 180 days, the employees display or demonstrate the firearms to prospective customers which may include firing them. During a similar period of time the writers examine the firearms which may involve firing them.

At the end of the loan period, the manufacturer offers the firearms for sale to the employees or the writers. Firearms that the employees or writers do not purchase are returned to the manufacturer for sale to other persons. Because of the condition of the firearms or the expense in restocking and examining for possible defects or damage, the manufacturer normally sells the firearms at reduced sale prices.

General.

The provisions of 26 U.S.C. 4181 and 27 CFR 53.61 impose an excise tax on the sale of firearms or ammunition by the manufacturer or importer. The provisions of 26 U.S.C. 4218 and 27 CFR 53.111 impose this excise tax on the use of firearms or ammunition by the manufacturer or importer in the same manner as if they had been sold.

Prior Rulings.

Two rulings issued by the Internal Revenue Service (IRS), Rev. Rul. 60-290, 1960-2 C.B. 331, and Rev. Rul. 63-256, 1963-2 C.B. 534, addressed the use of taxable articles by the manufacturer for purposes of display or demonstration.

Rev. Rul. 60-290 concerned the use of typewriters in the manufacturer's showroom as demonstrators. The ruling held as follows:

It is held, therefore, 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 machines were sold by him. It is further held that the liability for such tax is incurred at the time the demonstrator is placed in use and is computed on the price for which such or similar business machines are sold by manufacturers in the ordinary course of trade as determined by the Secretary of the Treasury or his delegate.

Rev. Rul. 63-256 further elaborated on the principles set forth in Rev. Rul. 60-290. Rev. Rul. 63-256 involved a situation in which a corporation maintained exhibition halls where its products were put on display. Only a small portion of the articles (radio and television receiving sets, phonographs, and combinations thereof) were actually turned on and operated. In addition, some

of the articles were placed in the homes and offices of the corporation's executives for display purposes or to familiarize themselves with the company's products. The ruling held as follows:

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.

Applying these principles to the display and demonstration of firearms in the present case, it is apparent that the firearms manufacturer's loan of firearms to its employees or writers is an integral part of its business. In the present situations the display, demonstration, or evaluation is intended to benefit the manufacturer through increased sales or by advertising when a technical evaluation of the firearm is published. In the case of display or demonstration by employees of the manufacturer, there is an express agency relationship so that use by the employee amounts to use by the manufacturer. Similarly, evaluation of the firearms by writers for trade publications results in an implied agency relationship between the parties so that use by the writers amounts to use by the manufacturer.

Therefore, the firearms manufacturer is liable for the tax on the use of the firearms when they are loaned to its employees or the writers. Tax is imposed at the time the articles are placed in use by the manufacturer. Computation of the tax is based upon the provisions of 26 U.S.C. 4218(c). The fact that the firearms are later sold at reduced sale prices does not reduce the liability for the excise tax on the manufacturer's use.

Held:

The tax imposed under 26 U.S.C. 4181 and 4218 applies to the loan of a firearm by the manufacturer to employees for the purposes of display or demonstration. Tax also applies to the manufacturer's loan of a firearm to writers for trade publications for purposes of familiarization and technical evaluation. Tax liability is incurred at the time the firearms are placed in use by the manufacturer and is calculated pursuant to 26 U.S.C. 4218(c). 26 U.S.C. 4181 and 4218 and 27 CFR 53.61 and 53.111: Tax on Use by Manufacturer, Producer or Importer of Firearms or Ammunition.