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Rev. Rul. 66-42

Advice has been requested whether, in determining a manufacturer's sale price for purposes of computing manufacturers excise tax, there may be excluded the expenditure for advertising in the publication described below.

A dealer selling new taxicabs advertises the articles in a taxicab publication issued weekly in the format of a newspaper. The publication is distributed to subscribers in a local area at an annual rate or at a specified price per copy. Examination of a representative issue of the publication discloses articles pertaining to parking and the traffic situation, information regarding a pending taxicab fare increase, articles dealing with public transportation in the municipality, stories of taxicab drivers being cited for honesty or bravery, information as to possible points of interest to riders, information regarding items of equipment, letters to the editor and editorial comment directed to the taxicab industry, etc.

Section 4216(f)(1) of the Internal Revenue Code of 1954 provides that in determining, for purposes of computing manufacturers excise tax, the price for which an article is sold, there shall be excluded certain charges for local advertising.

Under the provisions of section 4216(f)(4) of the Code, the term "local advertising" means, in part, advertising which is broadcast over a radio or television station or appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

Section 48.4216(f)-1(b)(5) of the Manufacturers and Retailers Excise Tax Regulations provides as follows:

The term "newspaper", as used in subparagraph (1) of this paragraph, is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless printed and distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

Section 48.4216(f)-1(b)(6) of the regulations limits the term "magazine" to those publications which are (1) commonly understood to be magazines, (2) printed and distributed periodically at least twice a year, and (3) published for the dissemination of information of a general nature or of special interest to particular groups.

The above-described publication disseminates only news of special interest to members of a group engaged in a particular business or occupation. Therefore, the publication is not a "newspaper" within the meaning of the regulations because it does not disseminate news of a

general character and of a general interest. Furthermore, the publication is not a "magazine" within the meaning of the regulations because it is not a publication of the type commonly understood to be a magazine.

Accordingly, in determining the manufacturer's sale price of automobiles for purposes of computing the manufacturer's excise tax, the <Page 256>manufacturer may not exclude charges made for advertising by its dealer in the publication described.