

INFORMATION BULLETIN #28S

SALES TAX

OCTOBER 2011

(Replaces Information Bulletin #28S dated December 2009)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Sales of Motor Vehicles and Trailers

EFFECTIVE: Upon Publication

REFERENCES: IC 6-2.5-1-5; IC 6-2.5-1-6; IC 6-2.5-2-2; IC 2.5-3-6; IC 6-2.5-3-7; IC 6-2.5-4-10; IC 6-2.5-5-38.2; IC 6-2.5-5-39; IC 6-2.5-13-1; IC 9-13-2-42; *Treasury Reg. 1.132-5(o)(2)*; *Revenue Procedure 2001-56*

I. INTRODUCTION

Generally, the sale of any motor vehicle or trailer is subject to Indiana sales and use tax unless such transaction is entitled to a statutory exemption.

If a motor vehicle or trailer is purchased from a registered Indiana dealer, the dealer must collect Indiana sales tax and provide to the purchaser a completed Form ST-108 showing that the tax has been paid. If the purchaser claims an exemption and tax is not collected by the dealer, the statement at the bottom of Form ST-108E must be completed disclosing the reason code for the exemption. It must also be signed by the purchaser. When a purchaser claims an exemption on Form ST-108E, the dealer must retain a completed copy of the ST-108E exemption certificate to document the exempted sale. An exemption form ST-105D may be used to document dealer-to-dealer sales that are exempt for the purpose of resale.

General Application of Sales Tax:

Absent a statutory exemption, all sales of motor vehicles and trailers purchased in Indiana are subject to Indiana sales and use tax. **This includes sales where the purchaser intends to immediately register, license, and/or title the motor vehicle or trailer for use in another state.**

Recreational Vehicles and Trailers Only:

A full exemption is applicable to the purchase of a recreational vehicle (RV) or a cargo trailer by a NONRESIDENT if the purchaser affirms that the purchase will be registered/titled within 60 days in a reciprocal state or country. A reciprocal state is one that allows an exemption to an Indiana resident who purchases an RV or a cargo trailer to be registered/titled in Indiana.

Dealers must collect the Indiana sales tax on sales to a nonresident of Indiana if registering or titling in one of the following nonreciprocal states/countries:

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|----------------------|----------------------------|
| Arizona | Mississippi |
| California | North Carolina |
| Florida | South Carolina |
| Hawaii | Canada |
| Massachusetts | Mexico |
| Michigan | All Other Countries |

Trailer Sale Note: In addition to the above list of nonreciprocal states, an Indiana dealer must collect the Indiana sales tax on the sale of cargo trailers to residents of Kentucky, Maine, and Rhode Island because these states are not reciprocal with Indiana as it relates to trailer sales.

To claim an exemption for a transaction involving a recreational vehicle or cargo trailer, the purchaser must complete Form ST-137RV. The original signed copy must be mailed to the Department within 30 days of delivery. The dealer must retain a completed copy of Form ST-137RV to document the exempted sale. Form ST-137RV is available on the Department's website at <http://www.in.gov/dor/3504.htm>

II. AMOUNT SUBJECT TO TAX

A. Rebates Versus Various Other Forms of Discounts

Any adjustment shown on a customer's purchase agreement for which the dealer receives payment or credit from a third party is to be treated as a payment and is not a reduction of the taxable selling price.

A **manufacturer's rebate** is not an allowable deduction from the taxable selling price if the dealer receives payment for such rebate, as shown on the customer's purchase agreement. A manufacturer's rebate, as shown on the customer's written purchase agreement, is a form of payment. It is not a reduction in the dealer's gross retail selling price.

Rebate Example: An automobile manufacturer provides a \$2,000 rebate to a customer on the purchase of a specified model of automobile. The customer negotiates a \$20,000 purchase price on the automobile. The customer then has a choice: He can pay \$20,000 to the dealer and receive \$2,000 in cash directly from the manufacturer, in which case the sales price would be \$20,000. Or he can assign the rebate to the dealer and pay an additional \$18,000 for the automobile. If the amount of the rebate is known by the dealer at the time of the sale and the rebate is identified as a manufacturer's rebate on documentation received by the purchaser, the rebate is included in the sales price. Thus, the sales price is \$20,000 whether the customer keeps the rebate or applies the rebate as a payment to the purchase price.

A **manufacturer's price reduction** is considered deductible for sales tax purposes. This is because the manufacturer is actually reducing the selling price of the vehicle. The dealer does not receive the amount of the price reduction as consideration for the sale.

A **dealer's price discount** is also considered deductible in determining the amount on which sales tax is charged. The selling price is reduced by the dealer's price discount. The dealer does not receive the amount of the price discount as consideration for the sale.

An **employee discount** arises when an automobile manufacturer has an automobile purchase plan for its qualified employees or qualified employees of an affiliate. Pursuant to the plan, the employee can purchase a vehicle from an authorized dealership at a predetermined price. If the dealer receives a reimbursement from the manufacturer or affiliate for the benefit of the employee, the reimbursement is not included in the sales price.

B. Trade-in Allowance

The deduction for a trade-in allowance applies only to "like-kind exchanges" in which the motor vehicle or trailer to be traded in is owned and titled in the name of the customer. A like-kind exchange means a motor vehicle traded for another motor vehicle or a trailer traded for another trailer. A trade-in of a motor vehicle for a trailer is not a "like-kind exchange" and is not deductible in the calculation of the amount of the taxable gross retail income received by the dealer. Non-like-kind exchanges are merely another form of a payment to the dealer and do not reduce the dealer's gross retail income.

The gross trade-in allowance in a like-kind exchange is deductible from the taxable selling price for sales tax purposes.

C. Documentation Fees

Documentation fees for services performed **after the transfer** of a vehicle or trailer are not considered part of the sales price and, therefore, are not subject to sales tax. Transfer of a vehicle or trailer takes place when the purchaser takes possession and control of the property and assumes the risk of loss, even though the title has not yet been transferred. The dealer must maintain adequate records to show which services pertain to the fees charged and that the services were performed after the transfer of the vehicle or trailer to be exempted from sales tax. Documentation fees charged for services performed **prior to the customer taking physical possession** of the vehicle or trailer are subject to sales tax.

III. SALES - EXAMPLES OF TAXABLE SELLING PRICE

| | | |
|----|--------------------------------|-------------|
| A. | (1) Sticker List Price | \$12,000 T* |
| | (2) Dealer Discount | \$500 E* |
| | (3) Trade-In Value (like-kind) | \$4,000 E |
| | (4) Taxable Selling Price | \$7,500 |

**T=Taxable; E=Exempt*

The dealer discount (number 2) is a reduction in selling price and is an allowable deduction from the amount subject to tax. Number 3 is consideration received by the seller; however, per statute, it is deductible from the amount subject to sales tax. The taxable selling price is 1 minus 2 minus 3.

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|----|--|------------|
| B. | (1) Sticker List Price | \$12,000 T |
| | (2) Dealer Discount | \$500 E |
| | (3) Trade-In Value (like-kind) | \$4,000 E |
| | (4) Mfg Rebate Paid Directly to "Customer" | \$1,000 |
| | (5) Taxable Selling Price | \$7,500 |

**T=Taxable; E=Exempt*

Numbers 2 and 3 reduce the amount subject to sales tax, whereas number 4 does not reduce the amount subject to sales tax. Note that in this example the rebate is paid to the customer, not the dealer. **Compare this example to Example C below. These examples show that regardless of who receives the rebate, it does not reduce the taxable selling price of the vehicle.** The taxable selling price is number 1 minus 2 minus 3.

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| C. | (1) Sticker List Price | \$12,000 T |
| | (2) Dealer Discount | \$500 E |
| | (3) Trade-In Value (like-kind) | \$4,000 E |
| | (4) Mfg Rebate Paid or Assigned to "Dealer" | \$1,000 |
| | (5) Taxable Selling Price | \$7,500 |

**T=Taxable; E=Exempt*

Number 2 is a reduction from the selling price per statute. Number 3 is consideration received by the seller; however, per statute, it is deductible from the amount subject to sales tax. The manufacturer rebate, number 4, is paid to the seller by the manufacturer and is not an allowable deduction from the taxable selling price of the vehicle. The taxable selling price is number 1 minus 2 minus 3.

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| D. | (1) Sticker List Price | \$12,000 T |
| | (2) Discount | \$500 E |
| | (3) Trade-In Value (like-kind) | \$4,000 E |
| | (4) Mfg Price Reduction (not paid to dealer) | \$1,000 E |
| | (5) Taxable Selling Price | \$6,500 |

**T=Taxable; E=Exempt*

Numbers 2, 3, and 4 are all allowable as a reduction of the amount of gross retail income subject to sales tax. Numbers 2 and 4 are true selling price reductions because the seller does not receive any payment. Number 3 is consideration (payment) received by the seller; however, like-kind exchanges (trade-in) are allowable as a reduction of the selling price subject to tax per Indiana Code. The taxable selling price is number 1 minus 2 minus 3 minus 4.

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|-----------|---------------------------------------|-------------------|
| E. | (1) Sticker List Price | \$12,000 T |
| | (2) Employee Discount | \$1,500 E |
| | (3) Trade-In Value (like-kind) | \$4,000 E |
| | (4) Taxable Selling Price | \$6,500 |

**T=Taxable; E=Exempt*

Number 2 is exempt as an employee discount from the manufacturer that may or may not appear on the purchase agreement. Number 3 is consideration received by the seller; however, per statute, it is deductible from the amount subject to tax.

These examples are based upon the assumption that the buyer takes physical possession of her purchase within Indiana.

IV. INTERSTATE COMMERCE EXEMPTION

A vehicle or trailer sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being “sold in interstate commerce,” the vehicle or trailer **must be physically delivered, by the selling dealer, to a delivery point outside Indiana.** The delivery may be made by the dealer, or the dealer may hire a third-party carrier. Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. The exemption

does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale.

V. APPLICATION OF SALES TAX TO RETURNED VEHICLES

A. Abandoned Vehicles

Transactions that result in abandoned vehicles are final, and sales tax that has been collected and remitted by the retail merchant will not be refunded, in whole or in part, to either the purchaser of the vehicle or the retail merchant.

The term “abandoned vehicle,” which is used here in its most commonly understood sense, includes all vehicles in all scenarios in which a purchaser abandons the vehicle and forgoes all legal rights to the vehicle and does not seek a refund of the purchase price.

The term “abandoned vehicle” does not include vehicles in scenarios in which a purchaser, as authorized by the written contract with the retail merchant, voluntarily foregoes all legal rights to the vehicle and is refunded the entire purchase price, including any sales tax.

The term “abandoned vehicle” is not used synonymously with, and does not reference, the definition of “abandoned vehicle” found at IC 9-13-2-1 or any other section of the Indiana Code.

If a transaction results in an abandoned vehicle, the retail merchant or other legally entitled party may claim any available sales tax bad debt deduction on an applicable tax return.

B. Repossessed Vehicles

Transactions that result in repossessed vehicles are final, and sales tax that has been collected and remitted by the retail merchant will not be refunded, in whole or in part, to either the purchaser of the vehicle or the retail merchant.

The term “repossessed vehicle” includes all vehicles in all scenarios in which the retail merchant or its agent repossesses the vehicle, regardless of purchase terms between the purchaser and the retail merchant.

If a transaction results in a repossessed vehicle, the retail merchant or other legally entitled party may claim any available bad debt deduction on an applicable tax return.

C. Customer-Returned Vehicles

Transactions that result in customer-returned vehicles for which sales tax has been collected and remitted by the retail merchant may qualify for a refund of sales tax, in whole or in part, to the retail merchant if:

- The vehicle is returned within the number of days allowed for a return pursuant to the retail merchant's publicly stated return policy or specified in the written contract entered into between the purchaser and retail merchant, not to exceed 90 days;
- The vehicle is returned pursuant to explicit, written terms of the parties' contractual agreement or the retail merchant's publicly stated return policy; and
- The purchaser of the vehicle is refunded the entire purchase price including any sales tax (i.e., the amount actually collected by the retail merchant from the purchaser of the vehicle).

All three conditions must be met in order for the refund of sales tax, in whole or in part, to be granted. Vehicles returned by purchasers after the number of days allowed for a return as specified in the written contract or the retail merchant's publicly stated return policy, or exceeding 90 days, do not qualify for a refund of sales tax.

Note: In some scenarios, subsequent to the purchaser being refunded the entire purchase price of the vehicle, the retail merchant may impose an administrative fee. To the extent that the administrative fee is specified as part of the retail merchant's publicly stated return policy or in the written contract entered into between the parties, the amount of the fee is not subject to Indiana sales tax when it is in the form of a one-time penalty that represents the retail merchant's legitimate administrative costs associated with returning the vehicle to its inventory.

However, in scenarios in which the retail merchant imposes one or more fees calculated on a per-diem basis, those scenarios represent a vehicle rental between the retail merchant and the purchaser. Accordingly, such fees are subject to sales tax. It should be noted that such rental fees also are subject to any applicable auto rental excise taxes.

VI. APPLICATION OF SALES AND USE TAX TO DEALER DEMONSTRATION VEHICLES

Indiana sales and use taxes apply to both new and used automobiles or vehicles used as dealer demonstration vehicles. "Automobile" or "vehicle" as used in this bulletin includes four-wheeled cars, trucks, and vans having a gross weight of not more than 8,500 pounds and motorcycles that are made primarily for use on public streets, roads, or highways. "Automobile" or "vehicle" does not include recreational vehicles. This bulletin is applicable to Indiana dealers as defined in IC 9-13-2-42(a) and all persons operating a vehicle with a dealer license plate.

Vehicles made available to school driver-education programs or not-for-profit organizations are not subject to Indiana sales and use tax.

Vehicles provided to other than full-time salespersons (e.g., family members, part-time salespersons, mechanics, managers of the dealership, and other individuals) are subject to use tax at a rate calculated as the Internal Revenue Service's optional business standard mileage rate times the Indiana sales tax rate. The vehicle dealer is required to pay the tax annually. Dealers are required to keep records of each vehicle, the miles driven, and when use tax was paid for the miles driven.

In lieu of accounting for the miles driven, the dealer can elect to report the use tax on 2 percent of the dealer's cost of purchasing the vehicle for each month (or fraction of a month) that the vehicle is used as a demonstrator, multiplied by the Indiana sales tax rate.

The definition of "full-time salesperson" is synonymous with the definition provided in U.S. Treasury Reg. 1.132-5(o)(2), which requires that the salesperson spends at least one-half of a normal business day performing the function of a floor salesperson; works at least 1,000 hours per year; and derives 25 percent of his/her gross income from sales activities. Vehicles used by full-time salespersons for "qualified automobile demonstration use" are not subject to sales and use tax. Vehicles that meet the criteria for "qualified automobile demonstration use" must:

- Be currently in the inventory of the dealership;
- Be available for test drives by customers during the normal business hours of the employer;
- Not contain personal possessions of any salesperson;
- Be driven within the dealer's sales area ("dealer's sales area" means an area within a radius of 75 miles from the dealership);
- Not be used by individuals other than the full-time salesperson (e.g., family members); and
- Not be used for personal trips.

Personal use of automobile demonstrators by full-time salespersons will be measured by the value reportable to the Internal Revenue Service or charged to the full-time salesperson in accordance with the provisions of Revenue Procedure 2001-56, times the sales tax rate.

For further clarification regarding dealer demonstration vehicles, please contact the Tax Policy Division of the Department of Revenue at 317-232-7282.

VII. SHOP SUPPLIES CONSUMED BY A DEALER

Consumable supplies, such as masking paper and tape, oil dry, sandpaper, buffing pads, rags and cleaning supplies, used by a dealer to repair and service motor vehicles are not exempt purchases

by the dealer. The dealer should pay sales tax on these types of purchases or remit use tax on the cost of these purchases on the dealer's sales tax returns. The purchaser (dealer) becomes the final consumer of such items because its customer does not become the owner of such consumable supplies. Although the dealer may charge the customer a fee for the dealer's consumption of these materials, such items are not being sold to the customer in a retail transaction and sales tax is not to be collected from the customer.

Additional information pertaining to sales tax concerning motor vehicles and trailers is found on the Department's website at <http://www.in.gov/dor/3781.htm>

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner