Dealer guide to Michigan sales and use tax
Second edition, January 2005

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About the Author

Edward J. Castellani, J.D., CPA, is an attorney and certified public accountant specializing in the representation of auto dealers with the law firm of Fraser Trebilcock Davis & Dunlap, P.C., in Lansing, Michigan. Mr. Castellani has represented the Michigan Automobile Dealers Association and its members for more than 22 years. He represents dealers on sales and use tax audits, informal conferences with the Michigan Treasury Department and appeals to Michigan Court of Claims and the Michigan Tax Tribunal.

Mr. Castellani maintains the Web site www.michiganautodealer.com and is the author of the newsletter Michigan Auto Dealer. He was appointed to the Revenue Commissioners Sales and Use Tax Oversight Committee, which revised the Administrative Rules for sales and use tax, is a member of the Tax Committee of the Michigan Chamber of Commerce, is a fellow of the State Bar Foundation, a member of Who’s Who in American Law, a member of the Taxation Section of the Ingham County Bar Association, former chair of the Business Law Section of the Ingham County Bar Association, a member of the State Bar of Michigan: Corporate and Business Law Sections, a member of the Michigan Association of Certified Public Accountants, former president of the Mid-Michigan Chapter of the Michigan Association of Certified Public Accountants, a member of the Government Advisory (Lobbying) Committee and the State and Local Tax Committee of the Michigan Association of Certified Public Accountants, and a member of the Member Services Committee of the Michigan Society of Association Executives.

Mr. Castellani graduated from the University of Michigan with a bachelor’s degree in business administration and received a law degree from the Detroit College of Law. He served two years in the tax department of Deloitte & Touche, L.L.P., and 22 years in the practice of law. He is a shareholder of Fraser Trebilcock Davis & Dunlap, P.C., a Lansing law firm.

Mr. Castellani speaks and writes about various tax and dealer issues, and has had numerous articles published by Michigan Bar Journal, Michigan CPA, Dealer’s Edge, edealer News and various auto dealer trade publications regarding individual, corporate and association tax matters.
Foreword

The Guide to Sales and Use Tax is intended to assist dealers in dealing with the complex world of sales and use tax. It is not intended to provide legal advice on a specific situation, and therefore should not be relied on as legal advice as to the rights and obligations of a specific Michigan automobile dealer.

This manual includes:

1. Information about the specific State of Michigan sales and use tax laws affecting Michigan automobile dealers;
2. What to do, and dealer’s rights, in the event of an audit; and

This guide was published in September 2001 and revised in January 2005. Subsequent laws, rules and cases may change the information contained in this publication.

On June 29, 2004, Governor Granholm signed four bills (HB 5502-5505), which were enacted as Public Acts 172 through 175 of 2004. These bills are meant to allow Michigan to participate in the Streamlined Sales Tax Project. Public Acts 172 and 173 rewrite the Use and Sales Tax Acts, respectively, effective September 1, 2004. MADA has worked to ensure that these Acts do not make any adverse changes to the taxation of automobile dealers.

If you need assistance, you may contact Edward J. Castellani at (800) 748-0436 or ecast@fraserlawfirm.com, or visit his Web site at www.michiganautodealer.com.

The author wishes to gratefully acknowledge the contributions and editorial assistance of the Michigan Automobile Dealers Association.
Chapter I

Difference between sales and use tax

1. What is sales tax?
   Sales tax is a tax on the gross proceeds of all dealers engaged in the business of making sales at retail. The Michigan sales tax rate is currently 6 percent. The tax is assessed on the dealer. The tax is usually passed on to the buyer who pays the sales tax to the dealer, and the dealer collects and remits the sales tax to the State of Michigan. If a dealer does not charge sales tax on a transaction or incorrectly computes any sales tax due, the dealer is liable to the State of Michigan for the unpaid sales tax.

2. What is use tax?
   Use tax is a tax on the privilege of using, storing or consuming tangible personal property in the State of Michigan. For dealers this means they must collect 6 percent use tax on lease receipts, pay use tax on use of vehicles in inventory and remit the taxes to the State of Michigan. (See the case discussed in Chapter III.2.d. on page 8.) However, if Michigan sales tax was paid when a vehicle was purchased, then use tax is not charged on lease receipts. Michigan law requires the dealer to pay use tax. If the dealer does not charge use tax on the lease payments or incorrectly computes any use tax due, the dealer is liable to the State of Michigan for the use tax. Use tax is due with the monthly or quarterly sales-tax return.

   Vehicles purchased outside Michigan and brought into the state are treated as acquired for consumption in Michigan and are therefore subject to use tax when brought into the state.
Dealership purchases

1. Exemption or “resale” certificates on dealership purchases.
   A dealership does not have to pay sales tax to a vendor if the item is purchased for resale and the dealership provides the vendor a valid exemption, or resale, certificate. A sale for resale is a transfer not for the dealer's consumption or use, to be resold by the dealer in the regular course of business. Sales for resale may only be made to persons with a sales tax license. The dealership is required to fill out and sign an “Exemption Certificate” and deliver it to the vendor in order for the transaction to qualify for the resale exemption.

2. Items purchased for resale and later used by the dealer.
   Items purchased for resale are not subject to sales tax at the time of purchase by the dealership. However, if instead of selling an item, the dealership uses it in its business, the dealership must pay use tax on the cost of the item. For example, if the dealership removes a part from inventory to repair a service vehicle, the dealership has lost its resale exemption and must pay use tax on the part.

3. Non-itemized shop supplies on dealership purchases.
   The resale exemption does not apply to shop supplies purchased by the dealership if the dealership charges a flat fee for non-itemized shop supplies used by the dealership. The dealership must pay sales tax on the shop supplies when it purchases them, and the customer does not pay sales tax on the shop supplies. Here’s an example:

   A body shop repairs a vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, solder, thinner, bolts, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to the customer, labor is separately listed at $300, the part (fender) is separately listed at $300 and the category of “materials” is separately listed for a lump sum of $100, for a total billing of $700. The sales tax computed by the body shop should be on $300, which is the amount attributable to the (fender) part. The materials consumed by the body shop were listed separately and non-itemized, and are not subject to sales tax paid by the customer.

   If the “materials” had not been separately listed on the invoice but included by marking up the (fender) parts charges, or if the materials were for items that were transferred to the customer, the body shop would have to collect sales tax on the full charges for materials even though sales tax had been paid by the dealership to the supplier when the materials were purchased.

4. Promotional items.
   Promotional items such as key chains, stickers, name plates, tags, labels and other similar items are taxable when purchased and are not eligible for the resale exemption even though customers may obtain possession of them.

5. Purchases on which a dealer does not have to pay sales tax.
   The dealership must decide at the time of purchase whether its purchases of parts and supplies are eligible for the “resale” exemption so that the dealer does not have to pay sales tax on the purchase.
The items listed below are examples of items a dealership can generally purchase sales tax-free because of the resale exemption:

<table>
<thead>
<tr>
<th>Item Type</th>
<th>Example Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Batteries</td>
<td>Door handles, Hoods, Tires</td>
</tr>
<tr>
<td>Brackets</td>
<td>Doors, Hub caps, Trim</td>
</tr>
<tr>
<td>Bulbs</td>
<td>Engine parts, Radiators, Trunk lids</td>
</tr>
<tr>
<td>Bumpers</td>
<td>Fenders, Rocker panels, Wheels</td>
</tr>
<tr>
<td>Cab corners</td>
<td>Floor mats, Shock absorbers, Window glass</td>
</tr>
<tr>
<td>Chassis parts</td>
<td>Grills, Side molding, Windshield ribbon</td>
</tr>
<tr>
<td>Door guards</td>
<td>Headlamps, Spark plugs, Windshields</td>
</tr>
</tbody>
</table>

6. **Purchases on which a dealer must pay sales tax.**

The dealership must pay tax on tools, parts, materials and supplies that it uses.

The items listed below are examples of items that are taxable when purchased or used by the dealership and generally *not* eligible for the resale exemption:

<table>
<thead>
<tr>
<th>Item Type</th>
<th>Example Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abrasives</td>
<td>Cleaning compounds, Polishes, Solvents</td>
</tr>
<tr>
<td>Battery water</td>
<td>Degreasing compounds, Rags, Striping tape</td>
</tr>
<tr>
<td>Body filler or putty</td>
<td>Floor dry, Razor blades, Steel Wool</td>
</tr>
<tr>
<td>Body lead</td>
<td>Grease, Rivets and cotter pins, Thinner</td>
</tr>
<tr>
<td>Bolts, nuts and washer</td>
<td>Grinding discs, Sand paper, Upholstery tacks</td>
</tr>
<tr>
<td>Brake fluid</td>
<td>Hydraulic jack oil, Sheet metal, Waxes</td>
</tr>
<tr>
<td>Buffing pads</td>
<td>Lubricants, Soaps, White sidewall cleaner</td>
</tr>
<tr>
<td>Chamois</td>
<td>Masking tape, Solder, Wiping cloths</td>
</tr>
</tbody>
</table>

**Please note:** An item on this list can be eligible for the resale exemption. The following two examples concerning paint illustrate this point:

**Example 1:** A dealer purchases a can of paint that is used entirely on one vehicle. If the dealer charges the customer for the can of paint and separately charges the customer sales tax for the paint, the dealer is eligible for the resale exemption and does not have to pay sales tax when it purchases the paint but must charge sales tax on the paint when it is sold.

**Example 2:** The dealership has a large container of paint that is used on a number of different vehicles. If the dealership can quantify the amount of paint used on each vehicle and the paint is billed and charged separately, the dealership would not have to pay sales tax on the paint when purchased but must charge sales tax on the paint when it is sold. If the dealership can not quantify the amount of paint used on each vehicle, or does not charge separately for the paint, the paint is not eligible for the resale exemption, and the dealership must pay sales tax on the paint when it is purchased or pay use tax when it is removed from inventory.

7. **Tools.**

There is no resale exemption on tools purchased for use in the dealership. The dealership must pay sales tax when it purchases tools.
Chapter III

Dealership sales

1. Service and parts department sales.
   a. Core charges. Frequently, on the sale of batteries, starters, alternators, etc., a dealer may accept the used part (core) from the customer and give them a credit against their purchase (core charge) of a new part. For example, a customer purchases a battery valued at $100. The customer turns in the old battery (core) and receives a $10 credit (core charge) toward the price of the new battery. The tax is computed on the $100 without regard to the $10 credit. The core is considered a trade-in. The tax is based on the full sale price of the battery.
   b. Environmental fee or hazardous-waste disposal fee. Charges for any environmental fee or hazardous-waste disposal fee are not taxable, if separately itemized.
   c. Internal sales (inventory withdrawals from untaxed inventory). Parts withdrawn from inventory for use or consumption by the dealership are subject to use tax when they are withdrawn from inventory.
   d. Inventory withdrawals. Items withdrawn from inventories for use or consumption by the dealer or dealership are subject to 6 percent use tax.
   e. Labor charges for repairs. Charges for labor and/or service when working on the property of others (such as a customer’s vehicle) are non-taxable if labor is separately itemized on the invoice.
   f. Labor and materials. Charges for materials are not taxable when the value of materials used is incidental or negligible in relation to the labor and/or service, such as rustproofing or window etching.
   g. Parts sales. Sales of parts are taxable except when the sale is for resale and the purchaser presents a valid exemption certificate. In any sale that is exempt from sales tax as a sale for resale, the purchaser must give the dealership an exemption certificate with the purchaser's sales tax number. Sales to unlicensed body shops and repair shops are taxable since a purchaser must have a sales tax license to qualify for the resale exemption.
   i. Sublet sales. Parts purchased with a sublet account are not subject to sales tax if purchased for resale by a licensed dealer. Parts purchased with a sublet account are subject to sales tax when sold to a customer.
   j. Supplies used. Materials used by the dealership (such as sandpaper, masking tape, grease, etc.) are a cost of doing business and subject to tax with either sales tax paid to the supplier at the time of purchase or use tax paid if purchased exempt for resale and later used by the dealership. (See Chapter II.7. on page 4.)
   k. Unlicensed body shops and repair shops. Sales of parts to unlicensed (for sales tax purposes) body shops and repair shops are taxable since a purchaser must have a sales tax license to qualify for the resale exemption.

2. Vehicle sales.
   a. Bad debt deductions. Bad debts may be deducted from gross proceeds when computing sales tax. A bad debt is retail-sale debt that has become worthless or uncollectible in the time period between the last sales-tax reporting period and current sales tax reporting period. To qualify as a bad debt, the debt must be deductible for federal income tax purposes under Section 166 of the Internal Revenue Code. The
amount deducted must be charged off as uncollectible on the dealership books. Bad debts do not include:

- Interest or sales tax on the purchase price,
- Uncollectible amounts on property that remains in the possession of the dealership until the full purchase price is paid,
- Collection expenses,
- Accounts receivable sold to a third party or
- Repossessed property.

(1) **Bad-debt reserve account.** If the dealer maintains a reserve for bad debts, only actual charges against the reserve representing uncollectible debts or accounts may be deducted for bad debt purposes. Contributions to the reserve account are not deductible as a sales-tax bad debt.

(2) **Recouping a bad debt after deduction.** If a dealer deducts a bad debt and later collects all or part of the debt, then the amount collected must be reported as a taxable sale in the reporting period during which it was collected.

(3) **Substantiating a bad-debt deduction.** A dealer claiming a bad-debt deduction must substantiate the bad-debt deduction by maintaining a record of all of the following:

   a. The name of the purchaser,
   b. The date of the sale or sales giving rise to the bad debt,
   c. The property price and the amount of sales tax charged,
   d. The amount of interest, finance or service charges incorporated in the debt or an account,
   e. The dates and amounts of any payments made and
   f. The portion of the debt or account representing a charge that was not subject to tax in the original transaction.

b. **Dealer-to-dealer trades.** A sale or trade with another dealer is a sale for resale and is eligible for the resale exemption. If property purchased for resale is consumed by the dealership, the dealership is liable for the use tax at the time of use by the dealership. Sales for resale may only be made to entities with a sales-tax license. The dealership should obtain a resale exemption certificate from the purchasing dealership as proof that the sale is exempt. A blanket exemption is available for a dealership that will be involved in numerous purchases that qualify for the resale exemption.

c. **Delivery charges.** Delivery charges on vehicles delivered by a dealership that does not have a separate delivery service are taxable if the delivery charges are accrued prior to the transfer of ownership of the vehicles. Delivery charges are not taxable if incurred after the transfer of ownership of the vehicle.

d. **Demonstrators (demos).** The Michigan Tax Tribunal recently ruled that any motor vehicle that a dealer purchases with the intention to resell may be used by the dealership for any purpose and will not be subject to use tax. This is contrary to the position of the Michigan Treasury Department, which has consistently taxed dealers on the use of vehicles in inventory. This decision was appealed to the Michigan Court of Appeals, and the Court affirmed the Tax Tribunal’s previous decision. As of press time, the Michigan Treasury Department has not acquiesced in this decision. Dealers must consult with their tax counsel to determine how to treat use tax on vehicles purchased for resale.

In spite of this ruling, Treasury Department policies contain the following rules for new and used vehicles in inventory. If a used vehicle is used exclusively for customer test drives or demonstrations to a specific customer, and this use can be documented by
the dealer, then the vehicle’s use is not subject to use tax. It is important that a dealer have documentation to prove that the use was for one of these exempt purposes. Use of a new vehicle from inventory for demonstration purposes (“demos”) may or may not be taxable, depending on how the vehicle was used and whether the dealer properly documents the use.

Each legal entity that is a new car dealership is allowed a certain number of tax-free demonstrators based on the total number of new cars and trucks sold in a calendar year as follows:

<table>
<thead>
<tr>
<th>New Vehicles Sold Annually</th>
<th>Tax Free Demonstrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-25 vehicles</td>
<td>2 tax-free demonstrators</td>
</tr>
<tr>
<td>26-100 vehicles</td>
<td>7 tax-free demonstrators</td>
</tr>
<tr>
<td>101-500 vehicles</td>
<td>20 tax-free demonstrators</td>
</tr>
<tr>
<td>501 or more vehicles</td>
<td>25 tax-free demonstrators</td>
</tr>
</tbody>
</table>

The demo allowance is computed for each calendar year. Tax-free demos may be carried over from one year to the next and will not reduce the number of allowable tax-free demos in the next year.

The Michigan Automobile Dealers Association sponsored legislation that determines a dealer’s use-tax obligation for demos. The law applies not only to demos but to any vehicles that accrue mileage while in dealership inventory.

The use tax on demos and on vehicles in dealer inventory is due for each month the vehicle is held by the dealer, and is based on a formula. The formula is the dealer’s cost of the vehicle multiplied by 2.5% plus $30 per month, beginning with the month that the dealer uses the vehicle in a non-exempt manner. This amount is then multiplied by the use-tax rate to determine the use tax for the month.

There are certain exemptions from this law, and the Treasury Department has announced certain policies for enforcing the law. The exemptions from this law include the following:

1. As discussed above, each dealer is entitled to a certain amount of tax-free demonstrators, based on the total number of new cars and trucks sold in a calendar year. The vehicles treated as tax-free under that law will be exempt from all use tax. Under current Treasury Department policy, this exemption applies only to new vehicles and not used vehicles.

2. Vehicles used by customers for test driving are not subject to use tax. However, the dealer must document that the vehicles were driven by customers for test-driving.

The Treasury Department has announced the following policies for enforcing the new demo tax law:

1. The Treasury Department will allow 1,000 miles per vehicle between the time the dealership purchases the vehicle and sells the vehicle. Vehicles in inventory with less than 1,000 miles will be exempt from use tax.

2. The first 25 new vehicles with mileage in excess of 1,000 miles will be allowed as demonstrators under the rule discussed above and will not be subject to use tax. The Treasury Department will not require any documentation to verify the use of these vehicles.

3. If a vehicle is titled, 6 percent sales tax is due on the acquisition price.

4. If a vehicle accumulates more than 1,000 miles, the vehicle will be rebuttably presumed to have been used for non-exempt purposes. A dealer may overcome this presumption by presenting records that document the
breakdown of non-exempt and exempt use. The best evidence would be a log of all use; however, other methods are acceptable to rebut the presumption.

(5) The first month of non-exempt use will trigger the tax. A log or record should be maintained to document the breakdown of non-exempt and exempt usage, similar to the IRS requirement for documentation of exempt mileage. This record can be as simple as a small notebook in the glovebox of each vehicle and should contain the following:

(a) Vehicle
(b) Name of person driving vehicle
(c) Date out
(d) Date in
(e) Vehicle use
(f) Beginning and ending odometer reading

(6) The Treasury Department will consider vehicles held 16 or more days in any month as held for a full month, and vehicles held 15 or less days in any month as not held for that month.

e. **Doc fees.** Document fees are treated as part of the dealer’s gross proceeds of a sale at retail and are subject to sales tax.

f. **Employee purchase plans.**

(1) **Purchase price negotiable.** Under an employee purchase plan in which the price is negotiable by the dealership and the employee, and the employee receives a discount or the manufacturer pays the dealer a portion of the negotiated purchase price, the total sales price is subject to sales or use tax. Occasionally, the employee will buy a vehicle for someone who is not an exempt-qualified member of the employee’s immediate family (father-in-law, neighbor, cousin, friend, etc.). Even though all the fees and tax were paid by this person through the employee, tax is due again on the retail value of the vehicle when the title is transferred from the employee to the other person.

(2) **Purchase price non-negotiable.** Under an employee purchase plan in which the price is not negotiable, factory employees are entitled to purchase a vehicle from the factory at the dealer’s cost. In return for the service of handling this transaction for the manufacturer, the dealer is compensated an amount equal to a percent of the manufacturer retail price less destination charge or other charges. The fee paid to the dealers by the manufacturers under this type of employee purchase program is not subject to sales or use tax.

g. **Exempt sales.** See Chapter V on page 17.

h. **Export sales.** Sales tax may not be due if the vehicle is to be delivered by the Michigan dealer outside the boundaries of Michigan. For export purposes, if a dealer contracts with a shipper and delivers the vehicle to a bona fide port of exit outside of Michigan for delivery to a foreign destination, sales tax is not due. However, if a dealer delivers a vehicle to the purchaser’s representative who will arrange shipment to a foreign destination, sales tax is due as the transfer of ownership of the vehicle took place in Michigan. This is true even if the delivery point is a bona fide port of exit located outside of Michigan.

i. **Gasoline tax credit.** Dealers are entitled to a sales tax credit for sales tax paid on gasoline when a new or used vehicle is sold with fuel in the gas tank. The procedure to compute the credit is as follows:

(1) Determine the number of new and used vehicles sold from the operating statements.
(2) Determine the number of gallons of gasoline put into each tank. Tank size on new vehicles can be determined by model. For used cars, use the number of gallons actually put in the vehicles. Multiply the total number of gallons by 85 percent.

(3) Find the average price per gallon of gasoline each year, not including the 19 cents Michigan Motor Fuel Tax.

(4) Multiply the number of vehicles in step 1 by the number of gallons in step 2. Multiply that amount by the average price per gallon in step 3.

(5) Take the amount as a deduction on line 5i of the sales, use and withholding return worksheet. Identify the deduction as “Prepaid sales tax.”

Dealerships with storage tanks should not use this procedure. A dealership that purchases gasoline from a wholesaler and uses storage tanks must make a claim for exemption for resale and prepay the sales tax to the wholesaler. The current prepaid sales tax rate is 5.8 cents per gallon or the amount paid. The prepayment is then used as a credit against the sales, use or withholding tax due. To obtain credit, the dealer must file a Gasoline Retailer Supplemental Report (Form 2189) with the monthly or quarterly sales, use and withholding tax return.

j. Internal sales. A transfer from one internal department within the dealership to another department for resale purposes is exempt as a sale for resale. If transferred to another department within the dealership for use or consumption, the use is subject to use tax.

k. Interstate motor carriers. Sales or leases of trucks or trailers that haul goods for others and travel 10 percent or more outside of Michigan are exempt from sales and use tax. The 10 percent or more mileage test is based on mileage in the 12 months prior to the sale or lease. A trucker that was not in business in the prior year will not qualify. For this purpose, a truck is a commercial motor-vehicle unit with two axles and Gross Vehicle Weight Rate (GVWR) over 10,000 pounds or a commercial motor vehicle with three or more axles. A trailer is a unit designed to be drawn behind a truck meeting the above requirements. The purchaser/lessee should sign an exemption certificate or indicate “Exempt under P.A. 116” in the remarks section of the RD-108.

l. Luxury tax. Starting on January 1, 2003, dealers no longer have to charge any type of luxury tax on new-vehicle sales.

m. Medical devices. Ramps, wheelchair lifts and similar medical devices are not subject to sales tax. For these devices to be tax exempt, the purchaser must provide a doctor’s prescription or order to prove that the device is a medical necessity. When processing the sale, the dealer should list the dollar amount for the device in the non-taxable section of the RD-108.

n. Ministers. Vehicle sales to ministers are not exempt from Michigan sales or use tax. Vehicles are subject to sales or use tax when purchased by a church for the minister’s use, but parts for the vehicle are tax exempt.

o. Native Americans. Effective on January 1, 2003, the State of Michigan has implemented rules to follow for tax-exempt motor-vehicle sales to Native Americans. The new rules apply to sales to tribal governments for an essential governmental function and, in some instances, to tribal members for personal use.

Certain tribes have signed agreements that allow the tribe to purchase motor vehicles without paying sales tax.

Additional tribes may enter into these Tribal Agreements with the State. The Treasury Department is required to post a copy of each Tribal Agreement on its Web site (http://www.michigan.gov/treasury) within 60 days after the effective date of the agreement.
(1) **Sales to tribal governments.** Sales of motor vehicles to a tribal government with a state-authorized agreement will be exempt from sales tax if the vehicle is purchased by the tribal government and used for an essential governmental function. At this time, the following tribes have agreements that allow tax-exempt motor-vehicle purchases for tribal government use:

(a) Bay Mills Indian Community  
(b) Hannahville Indian Community  
(c) Little River Band of Ottawa Indians  
(d) Little Traverse Bay Bands of Odawa  
(e) Nottawaseppi Huron Bank of Potawatomi Indians  
(f) Sault Ste. Marie Tribe of Chippewa Indians  

Dealers should check the State Web site for the Tribal Exemption Certificate (Form 3998) to verify that a tribe has a current Tribal Agreement before completing the sale without charging sales tax.

In order to complete a tax-exempt sale for the tribal entity, the dealership must collect and retain copies of the following documentation from the purchaser:

(a) Form 3998 (Tribal Certificate of Exemption for Sales and Use Tax)  
(b) A letter of authority from the State of Michigan (which authorizes the tribe to use the Tribal Certificate of Exemption)  

If the dealership accepts the certificate and letter in good faith, the dealer is not required to investigate whether the motor vehicle qualifies as a vehicle that will be used for an essential governmental function.

(2) **Sales to tribal members.** In addition to sales to tribal entities, some residential tribal members may purchase a motor vehicle for personal use without paying sales tax. In order to qualify for a tax-free purchase, the purchaser must be an enrolled member of a federally recognized tribe that has entered into a Tribal Agreement with the State of Michigan. At this time, only four tribes have agreements allowing tax-exempt sales to residential tribal members:

(a) Bay Mills Indian Community  
(b) Hannahville Indian Community  
(c) Little River Band of Ottawa Indians and  
(d) Pokegon Band of Potawatomi Indians  

More tribes may enter into agreements with the State, and dealers should check the State Web site or the Tribal Exemption Certificate (Form 3998) to verify that a tribe has a current Tribal Agreement before completing the sale without charging sales tax.

In order to complete a tax-exempt sale to residential tribal members, the dealership must collect and retain copies of the following from the purchaser:

(a) Form 3998 (Tribal Certificate of Exemption for Sales and Use Tax)  
(b) A letter of authority from the State of Michigan (which authorizes the tribal member to use the Tribal Certificate of Exemption)  

If a tribal entity or residential tribal member cannot provide the letter of authority, or if the tribe is not listed on Form 3998, the dealership must collect sales tax.

p. **Negative equity.** Dealers may finance negative equity for a trade-in on an installment sale contract. The negative equity is not subject to sales tax and should not be included
in Line 1 on the RD-108 as part of the purchase price of the vehicle. Negative equity should be disclosed in the installment sales contract and the RD-108 as the excess of the amount owed on a vehicle over the value of the trade-in and should be added to the amount financed in the transaction. Negative equity should not be disclosed as a negative down payment.

q. **Non-taxable sales.** See Chapter V on page 17.

r. **Prep charges.** Dealer prep charges are treated as part of the dealer’s gross proceeds of a retail sale and are subject to sales tax.

s. **Rebates (coupons).** Rebates and coupons may be subject to sales tax based on the source of the rebate (coupons), as explained below:
   (1) Dealer-provided rebates (coupons) are price reductions and are not included as gross receipts and are not subject to sales or use tax.
   (2) Manufacturer and other rebates (coupons) in which the dealer receives payment from a third party are part of the gross receipts and are subject to sales or use tax.

t. **Refunds.** Sales tax on returned goods, the sales of which were subject to tax, must be refunded or credited to the consumer and should be deducted from gross sales by the dealer if
   (1) The goods are returned for a full or partial refund or credit. With a partial refund or credit of the purchase price, the dealer must refund the sales tax on the partial refund. With a full refund, the entire sales tax must be refunded. The goods must be returned within the time period stated in the dealer’s refund policy or 180 days after the sale, whichever is sooner.
   (2) The term “returned goods” does not include:
      (a) Repossession or foreclosure of the vehicle by legal process,
      (b) Vehicle abandonment,
      (c) Voluntary surrender of goods without an entire refund, or full credit being given for the amount paid or
      (d) Goods accepted in a trade-in.

u. **Repossession (repos).** The leasing company or dealer is not subject to tax on repossession of a vehicle when applying for a resale title. If the leasing company or dealer applies for a regular title, use tax is due on the title transfer. Tax is due when the leasing company or dealer sells the vehicle at a later date. The leasing company or dealer collects this tax if either sells more than five vehicles a year. The leasing company or dealer that sells more than five vehicles a year must issue a tax receipt, which the Secretary of State branch offices will accept in lieu of collecting tax.

v. **Returns under lemon law.** In a “lemon law” buy-back by a manufacturer, the consumer must request any sales tax refund from the manufacturer. A dealership is not a party to a “lemon law” buy-back and therefore should not give a refund to the customer or claim a credit or refund on its sales tax return.

w. **Sublet sales.** Parts purchased with a sublet account are not subject to sales tax if purchased for resale by the dealer. Parts purchased with a sublet account are subject to sales tax on the marked-up amount when sold to a customer.

x. **Taxable basis.** All costs incurred prior to the transfer of ownership of a vehicle are included in the sales tax basis, including the following:
   (1) The sales price of the vehicle;
   (2) All document preparation (doc) fees;
   (3) Certain transportation and delivery charges (See Chapter III.2.c. on page 6);
Auto-emissions testing cost;
(5) The value of any trade-in credited against the sales price;
(6) Customer rebates received by the dealer, or
(7) Manufacturer’s coupons, rebates or incentives received by the dealer.

Items not included in the tax base include the following, if separately stated:
(1) License fee;
(2) Title application fee;
(3) Federal retailer’s excise tax;
(4) After market warranty;
(5) Dealer in-house rebates (coupons), and
(6) Charges for rustproofing, paint sealant, window etching and other items on which the dealer paid tax when purchased.

y. Tire sales. Sales tax must be collected on the gross proceeds from the sale of a tire and the federal excise tax on the sale of a tire.

z. Titling:

(1) Titling in another country. Michigan’s 6 percent sales tax must be charged unless the transaction meets the export-sales rule described in Chapter III.2.h on page 8.

(2) Titling in another state. If a 14-day in-transit permit is purchased (see chart on page 13), sales tax is due at the rate of the destination state or the 6 percent Michigan rate, whichever is lower based on the following:

(a) If the destination state is reciprocal with Michigan, the Michigan dealer should charge the tax rate and the destination state charges. If the destination state allows a trade-in allowance, it should be included when computing the tax due. All states are reciprocal with Michigan except Arkansas, Maryland, Mississippi, Oklahoma, West Virginia, District of Columbia, North Carolina and Nebraska.

(b) Indiana recently adopted a type of reciprocity that is different from other states’ reciprocity. If an Indiana resident purchases a vehicle in Michigan that is to be titled in Indiana, the purchaser pays 6 percent sales tax in Michigan and no tax in Indiana. If a Michigan resident purchases a vehicle in Indiana, the purchaser pays 6 percent use tax in Michigan when the vehicle is titled in Michigan.

(c) If the destination state is not reciprocal with Michigan, then the Michigan dealer should not charge sales tax.

(d) The dealer must prepare an RD-108 that shows the out-of-state address of the purchaser and a statement that the vehicle will be removed from Michigan for titling and registration in another state.

(e) The following states do not have sales tax and therefore the Michigan dealer should not charge tax for sales to be titled in the following states: Alaska, Delaware, Montana, New Hampshire, New Mexico and Oregon.

(f) If a 14-day in-transit permit is not purchased, the purchaser pays tax at the Michigan rate and may have to pay tax again when the vehicle is registered in another state.

aa. Trade-ins. Trade-ins are part of the sale proceeds and are subject to sales tax.
State Sales Tax Used for In-transits
(As of February 2003)

<table>
<thead>
<tr>
<th>State</th>
<th>Trade-In</th>
<th>Tax Rate</th>
<th>State</th>
<th>Trade-In</th>
<th>Tax Rate</th>
</tr>
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<tbody>
<tr>
<td>Alabama</td>
<td>Yes</td>
<td>2%</td>
<td>Missouri</td>
<td>Yes</td>
<td>4.225%</td>
</tr>
<tr>
<td>Arizona</td>
<td>Yes</td>
<td>5.6%</td>
<td>Nevada</td>
<td>No</td>
<td>6.5%</td>
</tr>
<tr>
<td>California</td>
<td>No</td>
<td>6%</td>
<td>New Jersey</td>
<td>Yes</td>
<td>6%</td>
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<tr>
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<td>2.9%</td>
<td>New York</td>
<td>Yes</td>
<td>4.25%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Yes</td>
<td>6%</td>
<td>North Dakota</td>
<td>Yes</td>
<td>5%</td>
</tr>
<tr>
<td>Florida</td>
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<td>6%</td>
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<td>Yes(3)</td>
<td>6%</td>
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<tr>
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<td>4%</td>
<td>Pennsylvania</td>
<td>Yes</td>
<td>6%</td>
</tr>
<tr>
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<td>4%</td>
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<td>Yes(4)</td>
<td>7%</td>
</tr>
<tr>
<td>Idaho</td>
<td>Yes</td>
<td>6%</td>
<td>South Carolina</td>
<td>Yes</td>
<td>5%(5)</td>
</tr>
<tr>
<td>Illinois</td>
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<td>6.25%</td>
<td>South Dakota</td>
<td>Yes</td>
<td>4%</td>
</tr>
<tr>
<td>Indiana (1)</td>
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<td>Tennessee</td>
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<td>7%</td>
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<tr>
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<td>5%</td>
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<tr>
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<tr>
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<td>Vermont</td>
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<tr>
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<td>4%</td>
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</tr>
<tr>
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<td>6.5%</td>
<td>Wyoming</td>
<td>Yes</td>
<td>4%</td>
</tr>
</tbody>
</table>

(1) Indiana extends a sales tax credit to Indiana residents who purchase vehicles in Michigan, but does not require Indiana dealers to collect Michigan sales tax.
(2) Trade-in credit allowed only when a new car is purchased from a Kentucky dealer.
(3) Trade-in credit allowed only when a new car or motor home is purchased from a dealer.
(4) Passenger cars only.
(5) Maximum is $300.

Revised October 2003

bb. Vending machine sales. Vending machine sales are subject to sales tax except for sales of milk, juices, fresh fruit, candy, nuts, chewing gum, cookies, crackers, chips and soft drinks.

c. Warranties.

(1) Sales tax on warranty deductibles. Customer-paid deductibles under manufacturers’ warranty contracts are subject to sales tax up to the price of parts sold to the customer. For example, if the consumer has a $100 deductible and the warranty work includes $200 for parts and $200 labor, the entire $100 deductible payment made by the consumer is treated as a payment for parts,
and the entire $100 is subject to sales tax. If the warranty work is $50 for parts and $200 for labor, only $50 of the $100 deductible is subject to sales tax, and sales tax should only be collected on $50, not on the $100 deductible.

(2) **Sales tax on after-market warranty sales.**
(a) Sales of after-market warranties (customer-purchased warranties) are not subject to sales or use tax, if separately stated.

(3) **Sales tax on parts installed under after-market warranty.**
(a) Charges for parts installed and paid by the warranty company are subject to sales tax.
(b) If a deductible is charged, sales tax is due on the cost of the parts up to the deductible paid by the customer as described in paragraph cc.(1) on page 13.

(4) **Sales tax on parts installed under a GM goodwill policy adjustment.**
(a) Parts installed by a GM dealer as part of a GM goodwill policy adjustment on vehicles that are out of warranty are exempt from sales tax.
(b) Parts installed as a goodwill policy adjustment by any dealer other than a GM dealer are subject to sales tax.

(5) **Sales tax on parts under manufacturer’s warranty (warranty included in purchase price).**
(a) Charges for parts installed and paid by a manufacturer are not subject to sales tax.
(b) If a deductible is charged, sales tax is due on the amount of the parts up to the deductible total paid by the customer as described in paragraph cc.(1) on page 13.

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1 See Revenue Administrative Bulletin 2004-3 on page 69.
3 See Revenue Administrative Bulletin 1993-7 on page 35.
Chapter IV

Dealership leases and rentals

The dealer or finance company that receives a down payment (capital cost reduction) on leased vehicles must pay use tax on the down payment (capital cost reduction). This tax should be charged to the customer.

2. Default by lessee.
Upon default by the lessee, the leasing company or dealer must attempt to collect any use tax due. If the leasing company or dealer cannot collect the use tax from the customers, through no fault of the dealer, then the dealer is not liable for the unpaid use tax.

The leasing company or dealer is not subject to tax on repossession of a vehicle when applying for a resale title. If the leasing company or dealer applies for a regular title, use tax is due on the title transfer. Tax is due when the leasing company or dealer sells the vehicle at a later date. The leasing company or dealer collects this tax if either sells more than five vehicles a year. The leasing company or dealer that sells more than five vehicles a year issues a tax receipt, which the Secretary of State branch offices accept in lieu of collecting tax.

3. Down payment.
See capital cost reduction in Chapter IV.1., above.

4. Driver’s training vehicles.
Driver’s training vehicles are exempt from use tax if they are purchased for lending or leasing to a public or parochial school offering a course in automobile driving, and the vehicle is certified for driving education and is not reassigned for personal use by the school’s administrative personnel.

5. Exempt leases.
Leases to the United States government, the State of Michigan or its political subdivisions, schools, churches, nonprofit institutions and to persons for use in agricultural producing (not including vehicles licensed for highway use) or industrial processing are exempt from sales and use tax. Leases to state governments other than Michigan are taxable.

The dealership has the option of paying sales tax on the total purchase price of the vehicle at time of purchase or at time of conversion to rental inventory, or the dealership may pay use tax on the lease receipts. The election to pay tax at time of purchase or conversion to rental inventory or on lease receipts, once made on a vehicle, is irrevocable.

If the lease-receipts method is elected, all use of the vehicle by the dealership or its salespersons, or its use as a service loaner to customers, is subject to use tax paid by the dealership.

Leases or rentals to the United States government, the State of Michigan or its political subdivisions, schools, churches (except vans and buses) and other qualified nonprofit institutions (exempt leases) are not subject to use tax if reporting via a lease receipts method. Likewise, replacement parts can be purchased sales- and use-tax free. Lease receipts include all costs paid by the customer, except late fees.

7. Non-taxable leases.
See Chapter IV.5., above.
8. **Purchase of lease vehicle.**
   Upon the exercise of a purchase option by the lessee customer, sales tax is due on the selling price of the vehicle.

9. **Rental vehicles.**
   The dealership may elect to pay sales tax on the full purchase price of a rental vehicle at the time of purchase or at the time of conversion to rental inventory. If sales tax is not paid, the dealership must collect use tax on the lease receipts. Once an election is made on a vehicle, it cannot be changed. If tax is collected as lease payments are received, certain uses of the vehicle by the dealership employees or customers are subject to use tax by the dealership under the demonstrator (demo) rules discussed in Chapter III.2.d. on pages 6 and 7. This dealership use may not be taxable if the Court of Appeals upholds the decision discussed in the same section.

10. **Trade-ins.**
    No deduction is allowed for a vehicle or part taken in trade on the lease of a new or used vehicle. There is no sales tax on the difference in Michigan.

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Chapter V

Non-taxable (exempt) sales

1. Cement mixer.
   Vehicles specifically designed and used to mix and agitate materials added at a plant or job site in the concrete manufacturing process are not subject to sales tax.

2. Churches.
   Sales tax is due on vehicles acquired by churches and houses of worship, except for vans and buses that have a manufacturer's rated seating capacity of 10 or more passengers and are used to transport passengers for church functions. Parts for a church-owned vehicle are tax exempt.

3. Credit unions — federal.
   Sales to a federal credit union are tax exempt. To qualify, the federal credit union’s name must end with the uninterrupted words “Federal Credit Union.” If any other words appear between the words “Federal Credit Union,” the credit union is not a federal credit union, and its vehicle purchases are taxable.

4. Diplomats.
   A diplomat is a person appointed to represent his or her government in relations with another country. Diplomats assigned to the United States and their family members may be exempt from tax on large items, including vehicles.
   The U.S. Department of State, Office of Foreign Missions, issues tax-exemption cards detailing the scope of exemption to foreign diplomats and consular personnel in the U.S. To qualify for tax exemption, a diplomat must present this card with the proper scope of exemption upon titling a vehicle. Dealers should include the card’s tax number and expiration date on the RD-108 and enter "Tax Exempt — Diplomat" in the reason field. For out-of-state sales, an in-transit registration must be obtained.

5. Documentation.
   Certain vehicle sales are exempt from sales and use tax. For any exempt sale, a dealer should obtain from the purchaser a signed exemption certificate to document that the sale is tax-exempt.
   a. For an exemption claim to be valid, the dealer must keep a record of
      (1) The name and address of the buyer,
      (2) The date of the sale,
      (3) The article purchased,
      (4) The amount of the exemption,
      (5) The use to be made of the article sold,
      (6) If the exemption is for resale, the sales tax license number of the purchaser,
      (7) If the exemption is for lease, the use tax registration number of the purchaser and
      (8) The reason the transaction is exempt.
   b. The Treasury Department requires separate exemption claims for each sale.
   c. Blanket exemption certificates accepted in good faith may be used if the dealer makes multiple sales of exempt items to the same purchaser.
d. When a purchaser buys both exempt and taxable items from a dealer, the certificate must identify the exempt items covered. The dealer remains liable for tax on items not specifically listed on the exemption certificate.

e. If a purchaser submits a blanket exemption claim for all items being acquired, but purchases both exempt and taxable items from the same dealer, the purchaser is liable for the sales tax on the items subject to tax.

6. **Driver’s training vehicles.**
   Driver’s training vehicles are exempt from use tax if the vehicle is purchased for lending or leasing to a public or parochial school offering a course in automobile driving, and the vehicle is certified for driver education and will not be reassigned for personal use by the school’s administrative personnel.

7. **Educational institutions.**
   An educational institution may be exempt if it is a 501(c)(3). See Chapter V.9.c., below.

8. **Enterprise Zone.**
   Businesses may claim a tax exemption for vehicles used within an Enterprise Zone. The City of Benton Harbor is the only Enterprise Zone that qualifies for this exemption at this time. To qualify for the exemption when titling a vehicle
   a. The business must present a copy of their certification as an approved business in the Enterprise Zone.
   b. The vehicle must be used in a qualified business activity within the Enterprise Zone.
   c. If the vehicle is sometimes used outside of the Enterprise Zone, tax is due only on the percentage used outside the Zone:
      (1) In the exemption field on the RD-108, the applicant should state “This vehicle’s purchase price is $____ and the percentage used outside the Enterprise Zone is ____%.”
      (2) For the taxable purchase price, multiply the purchase price by the percentage used outside the Enterprise Zone. For example, if a qualifying vehicle is used 15 percent of the time outside of the Enterprise Zone, multiply the purchase price by .15. Enter the result in the tax line.

9. **Exempt sales.**
   The following types of sales are exempt from sales and use tax:
   a. **Sales for resale.** Sales of vehicles or parts intended for resale are exempt. Dealers must have separate exemption certificates for each exempt sale or blanket exemption certificates. The exemption certificate must include the sales-tax license number of the purchaser and the reason the transaction is exempt.
   b. **Sales to governmental entities.** Sales to the United States government; the State of Michigan and its political subdivisions, departments and institutions; and the American Red Cross are not taxable when ordered on a governmental purchase order and paid for with government funds. The government entity should indicate on the exemption certificate that payment is from funds of the governmental entity.
   c. **Sales to nonprofit organizations.** Certain nonprofit groups qualify for tax-exempt status when acquiring a vehicle. The group must meet the requirements listed below:
      (1) **Exempt nonprofit groups.** The following nonprofit organizations, institutions and agencies are exempt from Michigan sales and use tax:
         (a) Nonprofit school,
         (b) Nonprofit hospital,
(c) Home for the care of children or aged persons,
(d) Nonprofit parent cooperative preschool and
(e) A 501(c)(3) or 501(c)(4) organization or organizations previously
   granted an exemption letter from the Treasury Department.

(2) **Non-exempt organizations.** Organizations such as Girl Scouts and Boy
    Scouts, social and fraternal organizations such as the Lions Club, Kiwanis
    Club, Rotary International, etc., are subject to sales tax in Michigan, unless
    exempt under sections 501(c)(3) or 501(c)(4) of the Internal Revenue code.
    Vehicles purchased under these exemptions must be used to carry out
    the activities of the organization as described in its bylaws or articles of
    incorporation.

(3) **Qualifying procedures.** To qualify for Michigan sales tax exemption,

   (a) Organizations other than a nonprofit school, nonprofit hospital,
       government agency or nonprofit parent cooperative preschool must
       submit either

       (i) Form C-3136, Letter of Exempt Determination issued by the
           Michigan Department of Treasury or

       (ii) Federal exemption letter showing that they are exempt from tax
            under Section 501(c)(3) or 501(c)(4) of the Internal Revenue
            Code. Photocopies are acceptable. **Nonprofit schools, non-
            profit hospitals, churches and government agencies do not
            have to submit either of the documents listed above.**

       (b) The vehicle must be titled in the name of the nonprofit entity
           (organization, institution or agency), used to carry out the activities
           of the entity as described in its bylaws or articles of incorporation and
           used exclusively by the entity.

   **Note:** Tax is due on vehicles acquired by churches and houses of worship, except for vans and buses
   with a manufacturer’s rated seating capacity of 10 or more passengers, if those vehicles are used to
   transport passengers for religious purposes. **Purchases of parts by churches and houses of worship
   for any vehicle are exempt from tax.**

10. **Farmers.**

   Farm vehicles may be exempt from sales and use tax based on their use. If a farm truck or
   trailer is ever used on-road, even for traveling from farm to farm, a license plate is required
   and sales tax is due.

   If the farm truck is used exclusively on the farm (it is never operated off the immediate location of
   the farm), the purchaser may claim a tax exemption.

   Farmers are exempt from tax and registration on an implement of husbandry that is incidentally
   operated or moved on a highway. An implement of husbandry is a vehicle designed for agricul-
   tural purposes and used exclusively in agricultural operations. Examples include tractors, com-
   bines, seeders, planters, etc.

11. **Interstate motor carriers.**

   Sales or leases of trucks or trailers that haul goods for others and travel 10 percent or more
   outside of Michigan are exempt from sales and use tax. The 10 percent or more mileage test is
   based on mileage in the 12 months prior to the sale or lease. A trucker that was not in business
   in the prior year will not qualify. For this purpose, a truck is a commercial motor vehicle unit with
   two axles and Gross Vehicle Weight Rate (GVWR) over 10,000 pounds or a commercial motor
   vehicle with three or more axles. A trailer is a unit designed to be drawn behind a truck that meets
   the requirements above.
The purchaser/lessee should sign an exemption certificate or indicate in the remarks field of the RD–108, “Exempt under P.A. 116.”

12. **Native Americans.**
   See Chapter III.2.o. on page 9.

13. **Sales to lease company — See also Chapter IV on page 15.**
   Sales to leasing companies will be subject to tax if the purchaser elects to pay tax at the time of purchase. Sales to leasing companies are not subject to tax if the purchaser elects not to pay sales tax at the time of purchase. If the purchaser does not pay sales tax at the time of purchase, the leasing company must charge use tax on the lease payments. If the purchaser elects not to pay the sales tax, the dealership should obtain from the leasing company an Exemption Certificate that includes the sales-tax license or use-tax registration number of the leasing company and the reason the transaction is exempt.

14. **School bus.**
   Sale of a school bus to an educational institution is exempt from tax.

15. **Servicemen.**
   Sales of vehicles to *nonresident* servicemen are exempt from sales tax if
   a. The vehicle is registered in the state of residence or domicile of the serviceman, and
   b. If at the time of sale, a sworn statement from the immediate commanding officer of the serviceman is furnished
      (1) Certifying that the person claiming the exemption is a member of the armed forces on active duty, and
      (2) Showing the recorded domiciliary or home address of the purchaser.

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7 See Revenue Administrative Bulletin 1989-64 on page 33.
8 See Revenue Administrative Bulletin 1993-10 on page 39.
9 See Revenue Administrative Bulletin 1996-6 on page 51.
10 See Revenue Administrative Bulletin 1995-3 on page 44.
Chapter VI

Filing, returns and refunds

1. Sales and use tax filing requirements.
   Sales and use tax must be paid by the 15th of the month, after the month in which it was collected. The method of filing is based on the amount of sales and use tax collected by a dealer. If the dealer collects less than $720,000.00 in a calendar year, they can file by mail. If a dealer collects more than $720,000.00 in sales and use tax in a calendar year, they must file by electronic funds transfer (EFT).

   If a dealership is not required to file by EFT and pays the tax before the 7th of the following month, the dealership gets a 0.75% discount on the tax collected at a rate of 4 percent, with the discount available for up to a monthly total of $20,000 in collected taxes. If the dealership pays the tax before the 15th of the following month but after the 7th, the dealership gets a 0.5% discount on the tax collected at the rate of 4 percent, with the discount available for up to a monthly total of $15,000 in collected taxes.

   Any dealer may file by EFT, and they will still receive the discounts described in the paragraph above. However, if a dealer is required to file by EFT, the discount is 0.5% on tax collected at the rate of 4 percent, with no limit on the amount of the discount.

2. General rules.
   If a dealer gives a refund or credit for a portion of the original purchase price, the dealer must also refund or provide a credit for the sales tax charged on the refunded portion, if the returned goods are returned within the time period for returns stated in the dealer’s refund policy or 180 days after the initial sale, whichever is sooner.

3. Lemon-law buyback.\textsuperscript{11}
   A dealer is not a principal in “lemon law” buybacks. This is a transaction between the manufacturer and the customer. Therefore, dealers should not refund sales tax to consumers nor claim credits for “lemon law” buybacks on their sales, use and withholding tax returns.

4. Sales-tax refund procedure.
   To obtain refunds of the sales tax, dealers should claim a credit on their next sales, use and withholding tax return.

5. Statute of limitations.
   The statute of limitations for claiming a refund is four years from the original sales-tax return due date.

\textsuperscript{11} See Revenue Administrative Bulletin 1995-9 on page 55.
Chapter VII

Noncompliance penalties

1. The Treasury Department can assess penalties and interest\textsuperscript{12} for late filing of tax returns, late payment of tax, failure or refusing to file, filing false or fraudulent returns, negligence, intentional disregard of rules, aiding tax evasion or making a false statement in a tax return or payment.

   In addition, if a corporation fails to file a tax return or pay the tax due for any reason, any of its officers with control, supervision or responsibility for making returns or payments are personally liable for the amount.

   The signature of any corporate officer on returns or payments is deemed evidence of the responsibility for making the return, and consequently would expose the officer to personal liability. Dissolution of the corporation does not discharge an officer’s liability for the corporation’s prior failure to file a return or remit tax.

2. Penalties assessed for fraud, failure to file, failure to pay, late filing, negligence and intentional disregard of rules can be waived in the opinion of the Treasury Department, if the taxpayer demonstrates reasonable cause to justify a waiver of the negligence penalty.

\textsuperscript{12} See Revenue Administrative Bulletin 2000-1 on page 65.
Chapter VIII

Audits

1. What to do.

If a dealership is notified that they will be audited by the Treasury Department, the dealership must cooperate with the Treasury Department since they have the legal right to audit any business in the State of Michigan.

The Treasury Department will give written notice of the items they want to review. At the audit, the dealer or a representative can present the requested items to the auditor, or the dealer can be represented by an attorney, accountant or other authorized representative who will meet with the representative of the Treasury Department.

The Treasury Department will usually conduct the audit at the dealership. Following are recommendations on how to handle the audit, if the audit is conducted on the dealership premises:

a. Refer auditors to a private room with a door that can be closed to allow the auditors to work in private, away from dealership operations;

b. Give the auditors the specific items requested and not more than the items requested, and

c. If the final audit report proposes that any tax, penalty or interest is due to the State of Michigan, the report may be discussed with an attorney or accountant or other qualified individual before any tax, interest or penalty are paid.

If the dealership does not cooperate with the Treasury Department's request, the Department can issue a summons for a taxpayer's testimony and records, within certain guidelines. The summons must describe with reasonable certainty the books and records sought and the examination time-frame. If a taxpayer intentionally disregards the summons, the State of Michigan can request a court to issue an order forcing compliance. In addition, the Treasury Department may issue a third-party summons to a person other than a dealership (such as a bank or finance company) for testimony or records related to the dealership's audit.

In the event the dealership does not have adequate or accurate records, the Treasury Department may assess tax, interest and penalties on the basis of information available to them.

2. Your rights.

The State of Michigan Department of Treasury has adopted a Taxpayer Bill of Rights that governs your rights in the event of an audit. The Taxpayer Bill of Rights was created to govern how an auditor must conduct himself or herself in an audit and to clarify taxpayer rights. The highlights of the Taxpayer Bill of Rights include the following:

a. Treasury Department employee conduct. Treasury Department employees must treat the public in a fair and courteous manner and perform his or her duties in a business-like manner.

b. Confidentiality of information. Treasury Department employees cannot disclose to any person except the taxpayer, or his or her authorized representative, any factual information obtained in connection with an audit. Access to any confidential information is restricted to Treasury Department employees who have a need to access the information to perform their duties.

c. Taxpayer representation. At any meeting with an auditor or at an informal conference, taxpayers may represent themselves or may be represented by an accountant, attorney, bookkeeper, tax preparer or any other third party. The representative must
file an appearance or other written authorization, as required by the Treasury Department.

d. **Right to informal conference.** A Notice of Intent to Assess is a notice that informs a taxpayer that tax, interest or penalty are due. The notice must be mailed to a taxpayer and must include a statement of the taxpayer’s right to an informal conference and the right to representation by counsel. If the taxpayer complies with the procedure for requesting the informal conference, the taxpayer is entitled to an informal conference with a hearing referee who will attempt to resolve the dispute before tax is assessed. The taxpayer is entitled to an informal conference.

e. **Penalty waiver.** The Treasury Department has the authority to impose a negligence penalty on tax owed to the Treasury Department. A taxpayer may request a waiver of the penalty by filing a written statement that explains the facts which constitute reasonable cause for the penalty’s waiver. The Treasury Department has the burden of establishing facts in support of the negligence penalty, and the taxpayer has the burden of establishing facts that would negate the finding of negligence.

f. **Failure to file or pay tax penalty.** If a taxpayer fails or refuses to file a return or fails or refuses to pay a tax, a penalty will be added to the tax owed. A taxpayer may request that the Commissioner of Revenue waive the penalty if the taxpayer establishes that the failure to file or pay was due to reasonable cause and not willful neglect. The penalty-waiver request must be in writing and must state the reasons that constitute reasonable cause. The taxpayer has the burden of affirmatively establishing by clear and convincing evidence that the failure to pay was due to reasonable cause.
SALES AND USE TAXES - LESSORS

(Replaces Position Paper SUW 84-006)

RAB-88-39. The Michigan Department of Treasury has established the following guidelines for the taxability of lessors as defined in the General Sales and Use Tax Acts and the General and Specific Sales and Use Tax Rules.

Lessors of tangible personal property have an option of remitting tax on their rental activity as a Lessor/Consumer or Lessor/Retailer. In order to operate as both, complete and accurate records must be kept documenting the leasing history of the tangible personal property. If proper records are maintained, a lessor/consumer purchasing for lease to an exempt organization may be treated as a lessor/retailer for that transaction. [Klochko Equipment Rental Co., Inc. v Michigan Department of Treasury, 3 MTT 242 (1984)].

Lessor/Consumer

1. Is subject to Michigan sales or use tax on all purchases of tangible personal property to be leased in Michigan as well as the purchase of tangible personal property used in the business. [Sales Tax Act, MCL 205.51(b); Use Tax Act, MCL 205.92(f)]

   A. If purchased in Michigan, sales tax will be paid at the time of the purchase.

   B. If purchased in another state or country, Michigan use tax will be due on the purchase of tangible personal property leased in Michigan.

2. Cannot use the exemption of the lessee when purchasing tangible personal property.

Note: In Michigan, the charter of aircraft or watercraft is a service. (Charter is defined as the rental of tangible personal property with crew or person that retains control of the property.) All purchases of tangible personal property by a charter service are taxable.

Lessor/Retailer

1. Must obtain a Use Tax Registration with the Michigan Department of Treasury.

   A. Will be allowed to purchase tangible personal property for lease or rental, tax-exempt.

   B. Will be allowed to purchase tangible personal property for repair or replacement parts in connection with property that is leased, tax exempt.

2. Is liable for use tax on the total rental receipts. This includes all charges, even
though separately itemized by the lessor to the lessee for the leased property. [Sales Tax Act, (MCL 205.51(g); Use Tax Act, MCL 205.92(f)];

Note: Examples of separate billings include:

- Insurance charges (except personal accident liability insurance)
- Property tax billing
- Maintenance and repair charges
- Delivery charges
- Interest charges
- Ad valorem tax, such as license plate fees that are based on value as opposed to license plate fees based on weight.

3. Is not liable for Use Tax when leasing to a qualified exempt lessee (agricultural producer, industrial processor, government agency, nonprofit entity, church, school, out-of-state lessee, * etc.).

4. When a lessee has the option to purchase service or maintenance from a third party, but purchases the service or maintenance from the lessor, the billing would not be included in the use tax base when a separate charge is made for the service. [RCA Service Co. Division, RCA Corp. v Michigan Department of Treasury, 135 Mich App 807; 355 NW2d 679 (1984)]

If the service or maintenance contract is necessary or incidental to complete the performance of the lease, the separate charge is taxable (as stated in item 2 above).

5. “One-way” leasing companies will remit use tax in Michigan on tangible personal property when the lease originates in Michigan.

6. A manufacturer of tangible personal property who also leases the manufactured property must register and collect use tax on the rental receipts, since they have not “purchased” the tangible personal property that they lease.

Lease for Release (Third-Party Leasing)

When Michigan sales or use tax has been paid or collected by the lessor, the subsequent lease is tax exempt. [Kal-Aero, Inc. v Michigan Department of Treasury, 123 Mich App 46; 333 NW2d 171 (1983)]

Examples: Company A (lessor); Company B (lessor); Company C (lessee)

1. Company A, a lessor/consumer, pays tax on the purchases of tangible personal property. The subsequent lease to Company B then to Company C is exempt from tax.

2. Company A, a lessor/retailer, purchases exempt for lease. Company A provides the seller with a valid claim for exemption, including their Sales Tax License or Use Tax
Registration Number. Company B, a lessor/consumer, pays tax on the purchases of tangible personal property. The subsequent lease to Company C is exempt from tax.

3. Company A, a lessor/retailer, purchases tax-exempt for lease. Company B is also lessor/retailer and purchases tax exempt for lease. Company B provides Company A with their Sales Tax License Number. Company B collects tax from Company A on a lease-back.

**Lease Purchase Agreements**

A 4% Michigan sales tax is due on the sale (buy-out) of tangible personal property that was purchased in connection with a lease agreement. [Sales Tax Act, MCL 205.51(d)] The rental and subsequent sale are two separate transactions for Sales and Use Tax purposes.

The entire consideration agreed to by the buyer and seller must be a part of the price, including interest or carrying charges for the rental period. [Sales Tax Act, MCL 205.51(g); Use Tax Act, MCL 205.92(f); *The Earle Equipment Co. v State of Michigan, Department of Treasury*, 136 Mich App 536; 358 NW2d 16 (1984)]

**Financial Institutions**

Retaining title for a leasing company is not a “true lease” of tangible personal property. A financial institution is not a lessee or liable for the tax.

However, the financial institution is liable for the tax when it retains title and receives payments from a lessor for the tangible personal property.
SALES AND USE TAXES - REVISED BAD DEBT GUIDELINES

(Replaces Sales and Use Tax Bulletin 1983-4)

RAB-89-61. Effective January 1, 1984, 1982 PA 23 amended the Sales Tax Act, MCL 205.51 et seq., to allow a deduction for bad debts. This Bulletin explains the bad debt deduction a retailer may claim relating to previously reported taxable retail sales. [MCL 205.54i(1)]

Effective May 24, 1985, a taxpayer may deduct the amount of bad debts relating to prepaid sales tax on gasoline. [MCL 205.56a(3)]

Bad Debt Defined

“Bad debt” means that portion of a debt or account receivable relating to a sale at retail, or to prepaid sales tax on gasoline, not otherwise deductible or excludable, that has become worthless or uncollectible between the last sales tax reporting period and the current sales tax reporting period. This bad debt must be eligible to be claimed, in accordance with the taxpayer’s accounting method, as a deduction under Section 166 of the Internal Revenue Code.

Amounts Not Included as Bad Debt

The bad debt deduction for sales tax purposes shall not include any amount represented by the following:

1. Interest or finance charge.
2. Sales tax charged on the original sale.
3. Uncollectible amounts on property where the property remains in the possession of the vendor until the full purchase price is paid, i.e., property placed on layaway.
4. Expenses incurred in attempting to collect any account receivable or any portion of an account that is subsequently recovered.
5. Any debt or account receivable that has been sold, assigned or transferred to a third party for collection.
6. Sales tax charged on property that is subsequently repossessed.
7. A sale where tax was paid more than 4 years prior to the date of the bad debt claim. [MCL 205.59(3)]
Substantiating a Bad Debt Deduction

The taxpayer claiming a bad debt deduction must substantiate the validity of such a deduction by maintaining a record of all of the following:

1. The name of the purchaser/debtor.
2. The date of the sale or sales giving rise to the bad debt.
3. The price of the property and the amount of the sales tax charged.
4. The amount of interest, finance or service charges incorporated in the debt or an account.
5. The dates and amounts of any payments made on a debt or an account.
6. The portion of the debt or account representing a charge that was not subjected to tax in the original transaction.

If the above documentation is not available, then the maximum deduction allowed shall equal the amount of the bad debt times the percentage obtained by dividing the retailer’s taxable sales in the preceding calendar year by total sales in the preceding calendar year.

Bad Debt Reserve Account

If the retailer maintains a reserve for bad debts, only actual charges against the reserve representing uncollectible debts or accounts may be deducted for bad debt purposes. Contributions to the reserve account are not deductible as a sales tax bad debt.

Recouping a Bad Debt After Deduction

If a retailer takes a bad debt deduction and later collects all or part of the account, then the amount collected must be reported as a taxable sale in the reporting period it was collected. If the wholesaler of gasoline later collects all or part of an account for which a prepaid sales tax on gasoline bad debt deduction was claimed, then the tax collected must be used to adjust the credit due to the wholesaler on the next Form C-3239 WHOLESALE GASOLINE DISTRIBUTOR SUPPLEMENTAL SALES TAX REPORT.
SALES TAX - FEDERAL CREDIT UNIONS AND FEDERAL HOME LOAN BANKS

(Replaces Revenue Administrative Bulletin 1989-7)

RAB-89-64. The purpose of this Bulletin is to clarify the sales tax exemption granted to federal credit unions in the decision of U.S. v State of Michigan, 851 F 2d 803 (6th Cir. 1988). In this decision, the Sixth Circuit United States Court of Appeals held that the incidence of Michigan sales tax falls upon federal credit unions as purchasers rather than upon retailers selling tangible personal property to them. Therefore, the federal credit unions, which are exempt from direct state taxation by federal law, are not subject to sales tax on their purchases of tangible personal property for their own use.

Note: A federal home loan bank is a federal instrumentality and its purchases of tangible personal property are exempt from sales and use taxes according to a stipulated consent judgment entered in the Federal District Court for the Western District of Michigan.

This exemption does not extend to state chartered credit unions, national or state banks, or state or federally chartered savings and loan institutions.

Sales Made by Federal Credit Unions or Federal Home Loan Banks

Sales made by federal credit unions and federal home loan banks are subject to tax. This includes sales of checks or drafts by the federal credit unions or federal home loan banks to their customers. When a federal credit union or federal home loan bank provides checks to a customer and assesses a “service charge,” it is making a sale. A federal credit union or federal home loan bank purchasing checks for resale to customers may claim exemption by providing the statement “for resale at retail” to the seller, along with the federal credit union’s or federal home loan bank’s sales tax license number.

Exempt Sales Made to Federal Credit Unions or Federal Home Loan Banks

An exempt credit union is easily recognized, as its name must end with the three words “Federal Credit Union,” in that order. For example, a credit union with the name “_______ ___________ County Employees Federal Credit Union” is an exempt federal credit union. Purchases of tangible personal property by the federal credit union for its use are exempt from tax. However, a credit union with the name “________________ County Federal Employees Credit Union ” is not an exempt federal credit union. Purchases of tangible personal property by the latter credit union for its own use are subject to tax.

Michigan Sales and Use Tax Rules, 1979 AC, R 205.79, provide that sales to the federal government are not taxable when ordered on a purchase order and paid for by warrant on government funds. A federal credit union or federal home loan bank may also claim exemption by providing the seller, at the time of purchase, with a signed statement to the
effect that the purchaser is a federal credit union or federal home loan bank. A sample of such a statement that is acceptable for claiming exemption is printed below.

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE IS MADE TO EXEMPT FEDERAL CREDIT UNION OR FEDERAL HOME LOAN BANK

The undersigned hereby certifies that the tangible personal property being purchased is not for resale and is to be used in connection with the operation of the federal credit union or federal home loan bank named in the space below. The consideration for this purchase moves from the funds of the federal credit union or federal home loan bank. In the event this claim is disallowed, the purchaser promises to reimburse the seller for the amount of tax involved.

__________________________
Name of Federal Credit Union or Federal Home Loan Bank

_____________________________ ______________________
Signature and Title of Claimant Date

Refund Procedure for Taxes Paid

The tax paid by federal credit unions and federal home loan banks for the periods June 1, 1976 through December 31, 1988 has been refunded directly to the federal credit unions and federal home loan banks by the Department of Treasury. Refunds of tax paid by federal credit unions or federal home loan banks after this period should be requested from the vendor. The vendor may then apply to the Department for a refund or credit.
SALES TAX TREATMENT OF DELIVERY SERVICES PROVIDED BY RETAILERS

(Replaces Revenue Administrative Bulletin 1990-11)

RAB-93-7. This Bulletin replaces Revenue Administrative Bulletin 1990-11 in its description of the taxability of delivery charges collected by a seller of tangible personal property. The discussion is limited to charges for delivery directly by the seller or delivery by a contract carrier. Delivery by common carrier or postal service is not discussed.

Background

The Michigan Sales Tax Act [MCL 205.52(l); MSA 7.522(l)] provides that “there shall be collected from all persons engaged in the business of making sales at retail . . . an annual tax for the privilege of engaging in that business equal to 4% of the gross proceeds thereof . . . .

“Gross proceeds” is defined in MCL 205.51(l)(h); MSA 7.521(h) as “the amount received in money, credits, subsidies, property, or other money’s worth in consideration of a sale at retail within this state, without a deduction for the cost of the property sold, the cost of material used, the cost of labor or service purchased . . . . or other expenses.”

Department of Treasury Sales and Use Tax Rule, 1979 AC, R205.124, states:

“For the purpose of computing the tax, no deduction is allowable on account of freight, express, mail, cartage or other transportation or delivery charges incurred or to be incurred on tangible personal property prior to completion of transfer of ownership of such property from the seller to the purchaser for use or consumption. It is immaterial whether such transportation charges are billed separately or whether they are paid by the seller or the purchaser.”

In Natural Aggregates Corporation v Michigan Department of Treasury, 133 Mich. App 441;350 NW2d 272 (1984); lv den 419 Mich. 949 (1984), the Michigan Court of Appeals held that certain delivery charges were not taxable because the retailer was engaged simultaneously in a non-taxable business (viz., delivery). The court characterized the delivery as a transaction separate from the sale, both conceptually and temporally. The court noted that the purchase price of the tangible personal property (viz., sand and gravel) was the same for all customers regardless of the delivery method.

Customers who used the retailer’s delivery service negotiated and contracted separately for the service and paid a separate price. The trucking charges were not a cost used to calculate the gross price of the product. The delivery charge was not an incidental cost of the purchase price, running between five and six times the amount of the purchase price. Construing MCL 205.52(2); MSA 7.522, the Court held that the retailer’s delivery service was “some other kind of business” not taxable under the Act.
In Margaret H. James, Ltd v Michigan Department of Treasury, Court of Appeals unpublished Opinion No. 132896 (June 26, 1992), the Court of Appeals cited Natural Aggregates, supra., and further explained the statute’s definition of “some other kind of business.” The Court concluded that a delivery service is a separate business when delivery charges are at the market rate and the records from this business show a new profit. These facts indicated that the delivery service was operating as a separate commercial endeavor.

**Department of Treasury’s Position**

When determining the taxability of delivery charges, the Department considers all of the facts and circumstances surrounding the retailer’s business activities.

A retailer will be deemed simultaneously engaged in a separate delivery service business that is not taxable if all of the following conditions are met:

1. The customer has the option to either pick up or have the merchandise delivered (thus, the delivery service is not always necessary to complete the transfer of tangible personal property or the performance of the transaction);

2. The delivery service charge is separately negotiated and contracted for on a competitive basis and is not a cost in calculating the merchandise price, as the customer pays a separate price (thus, the delivery service charge is not incidental to the purchase price--demonstrating a separate service transaction);

3. The taxpayer’s books and records separately identify the transactions used to determine the tax on the sale at retail; and

4. Delivery service records show a net profit (thus, the delivery service has evidence of a separate competitive, commercial endeavor).

All four conditions must be met for the seller to be considered simultaneously engaged in a nontaxable delivery service.

Delivery charges on merchandise delivered by a seller who is not engaged in a separate delivery service business as defined above are taxable if the charges are incurred prior to the transfer of ownership. Delivery charges are not taxable if incurred after the transfer of ownership.

**Examples**

1. A retailer sells furniture and delivers it to the customer in trucks leased or owned by the seller, or occasionally contracts with a private delivery service. The delivery, which is optional to the customer, is priced and invoiced separately. The retailers records separately identify the sales transactions from the delivery service
transactions, itemize delivery-related expenses, and show a net profit from the delivery business. The delivery charge is not taxable.

2. A retailer sells furniture and delivers it to the customer in trucks leased or owned by the seller, or occasionally contracts with a private delivery service. The delivery, which is optional to the customer, is included in the invoiced price of the furniture. Should the customer opt to pick up the furniture, the price would be reduced by the amount of the delivery charge. The retailer’s records separately identify the sales revenue from the delivery service revenue, itemize delivery-related expenses, and show a net profit from the delivery business. The delivery charge is not taxable.

3. A retailer sells furniture and delivers it to the customer in trucks leased or owned by the seller, or occasionally contracts with a private delivery service. The delivery, which is optional to the customer, is included in the invoiced price of the furniture. However, should the customer opt to pick up the furniture, the invoice would not be reduced by the cost for the available delivery service (i.e., the available delivery service is a cost in calculating the price of the furniture and is not negotiable). The delivery charge portion of the invoice price is taxable as part of gross proceeds.

4. A retailer contracts with a private delivery service to deliver its stone; this delivery service is not optional to the customer. The delivery charge is taxable as part of gross proceeds.

5. A customer contracts with a private delivery service to pick up and deliver the stone purchased from a retailer. Because this is a service cost incurred after the transfer of ownership, the delivery charge for this service is not taxable.
RAB-93-10. The purpose of this bulletin is to provide additional clarification of the sales, use and single business tax treatment of a business that is qualified under the Enterprise Zone Act, hereafter called the “Act.”

Background

The Enterprise Zone Act, MCL 125.2101; MSA 3.540(301), et seq., was created to encourage businesses to locate and expand in areas which have high unemployment, low income, high property taxes and low property value. The General Sales and Use Tax Acts were amended by Act 225 of the Public Acts of 1985 and Act 13 of the Public Acts of 1986, being Sections MCL 205.54j; MSA 7.555(4j) and MCL 205.94h; MSA 7.555(4h), respectively, to allow a certain exemption from these taxes to a qualified business as certified under the Enterprise Zone Act. Additionally, the Single Business Tax Act was amended by Act 226 of the Public Acts of 1985, being Section MCL 208.37a; MSA 7.558(37a) to allow a qualifying business a credit against the tax.

Results of Qualification

Sales and Use Tax

Upon certification by the enterprise zone authority, a qualified business shall be exempt from sales and use taxes on tangible personal property purchased by or leased to the qualified business for its use in a qualified business activity and not for resale or resale leasing.

The Act defines “qualified business activity” and “enterprise zone” as follows:

“Qualified business activity means business activity in an enterprise zone of a qualified existing business attributable to a new facility or the business activity in an enterprise zone of a qualified new business.” MCL 125.2103(g); MSA 3.540(303)(g).

“Enterprise zone means an area approved as an enterprise zone by the authority as provided in this act.” MCL 205.2103(c); MSA 3.540(303)(c).

As used in this bulletin, “qualified business” means that term as defined in the Act.

Consistent with these definitions, sales and use tax exemptions will apply to tangible personal property only to the extent it is used within the prescribed boundaries of the enterprise zone. Usage of property outside the enterprise zone boundaries is taxable.
unless subject to another enumerated exemption. Where property is used both within and without the enterprise zone boundaries, such property may be taxed using an appropriate allocation (i.e., a vehicle used both within and without the enterprise zone may use a mileage allocation method to determine the taxable portion of both the vehicle and fuel consumed in it).

The exemption applies to persons who have been certified as a qualified business within the enterprise zone, acting as construction contractors who are directly engaged in the business of constructing, altering, repairing, or improving real estate for others. The exemption applies only to the extent that the qualified business construction contractor constructs, alters, repairs, or improves real estate within the enterprise zone. The exemption does not apply for qualified business construction contractors when they are constructing, altering, repairing, or improving real estate for others outside the enterprise zone. The exemption does not apply to construction contractors who are not themselves a qualified business, even when they construct, alter, repair, or improve the real estate of a qualified business within the enterprise zone.

The sales and use tax exemptions apply to electricity and natural gas, provided all other conditions of the Act are met.

The Use Tax Act imposes the use tax on services that include room accommodations and telecommunications services. The Act exempts tangible real and personal property. Because services are neither tangible real nor personal property, they are not exempt from taxation.

When making a purchase or lease exempt from sales or use tax, the qualified business shall present a copy of its approved certification as a qualified business. The Department of Treasury will not issue a separate certification of exemption.

**Single Business Tax**

Upon certification by the enterprise zone authority, the qualified business becomes eligible for a single business tax credit. The business may credit against the tax an amount equal to the tax liability attributable to a qualified business activity in an enterprise zone.

The tax liability attributable to a qualified activity is calculated by first determining the tax liability imposed after the calculation of the small business credit, S corporation credit, charitable contributions credit, and the credit for railroad, depot, telegraph, and telephone companies and others owning and operating railroad cars, and transporters of oil or gas by pipeline. This tax liability is then multiplied by one of the following:

1. For a new business, a fraction the numerator of which is the ratio of property located in the enterprise zone to all property located in this state plus the ratio of payroll in the enterprise zone to all payroll in this state and the denominator of which is 2.

2. For an existing business, a fraction the numerator of which is the ratio of the value of a new facility as defined in the Enterprise Zone Act to all property located in this
state plus the ratio of payroll in the enterprise zone to all payroll in this state and the
denominator of which is 2.

The terms "new business" and "existing business" are defined in sections 3(h) and (i) of the
Enterprise Zone Act.

The credit allowed by this section shall not exceed the tax liability of the taxpayer for the tax
year. There is no carryforward of any excess credit.
RAB-95-3. This bulletin announces the amendments to the General Sales Tax Act and Use Tax Act pertaining to nonprofit entities, enacted by Public Act 156 of 1994 and Public Act 424 of 1994, respectively. Both the General Sales Tax Act and Use Tax Act were amended to alter the qualifications for sales and use tax exemptions provided to certain nonprofit organizations other than schools, churches, nonprofit hospitals and governmental agencies. After the January 1, 1994 effective date, the exemption is limited to organizations that have federal tax-exempt status under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. In addition, the amendment to the General Sales Tax Act enacts a new provision for certain qualified nonprofit organizations that gives an exclusion from gross proceeds for sales made by nonprofit entities. A new procedure for claiming exemption for purchases made by certain qualified nonprofit organizations is also provided.

Background

Prior to the passage of the 1994 public acts, sales and use tax exemptions for schools, nonprofit hospitals and certain nonprofit organizations were covered only in sections 4a(a) and 4(i) of the General Sales Tax Act and Use Tax Act [MCL 205.54a(a); MSA 7.525 and MCL 205.94(i); MSA 7.555(4i)]. Michigan Administrative Code Rule 205.140 [1979 AC, R 205.140] specifically discussed these “certain other types of nonprofit organizations.”

Revenue Administrative Bulletin 1990-3 established procedures for Departmental review and determination of tax-exempt status for these “certain other types of nonprofit organizations”. The Sales, Use, and Withholding Taxes Division reviewed information supplied on an application and supporting documents, and issued an “exemption ruling letter” signed by the Administrator of the division, which affirmed the exemption for these “certain other types of nonprofit organizations.”

SALES TAX

Michigan’s 6% sales tax is imposed on a seller for the privilege of engaging in the business of making sales at retail in Michigan. A sale at retail is defined as the transfer of ownership to tangible personal property.

The tax applies to sales of tangible personal property which take place in Michigan. Generally, this will only include purchases by nonprofit organizations from businesses or other persons located in Michigan.

Sales tax will not apply to purchases where the tangible personal property is shipped by mail or common carrier to the nonprofit organization from a location outside of Michigan. These sales will be discussed later in this bulletin under “use tax.”
Sales to Nonprofit Organizations

Public Acts 156 and 424 of 1994 eliminate the need to apply for Departmental certification for new organizations by allowing tax exemption for sales to nonprofit organizations that are exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (IRC). The new exemption is retroactive to January 1, 1994.

To be exempt, the purchase of tangible personal property must be used or consumed primarily in carrying out the purposes of the institution or agency, as stated in the bylaws or articles of incorporation of the exempt entity. While the bylaws or articles of incorporation of an exempt nonprofit organization probably allow the organization to perform fund-raising activities such as bingo, Las Vegas Nights, and raffles, fund raising is not the stated purpose of the organization. Fund raising is merely a means to an end. The stated purposes of nonprofit organizations are the end goals, which are generally of a health, welfare, educational, cultural arts, charitable, or benevolent nature. An organization would not receive federal 501(c)(3) or 501(c)(4) nonprofit status if its stated purpose was to run a bingo game, Las Vegas Night, raffle, or other fund-raising activity. Therefore, purchases of property used in fund-raising activities are taxable.

Similarly, the sale of a vehicle to the exempt nonprofit organization may or may not be exempt from sales tax. The sale would be exempt if, for instance, the administrative duties of the director required transportation, and the vehicle would be used primarily for that purpose. The sale would not be exempt if the vehicle is given to the director for personal use as a fringe benefit or as compensation, or it will be used as the prize in a fund-raising raffle.

Sales, the cost of which, will be paid or defrayed by reimbursement to the nonprofit entity from members or others are not exempt. In all instances, to be exempt the consideration for the purchase must move directly from the funds of the exempt nonprofit organization.

Sales of tangible personal property to qualified nonprofit organizations for use in qualified activities (not for resale) are exempt from tax provided:

1. Organizations previously certified as exempt present the “exemption ruling letter”, reissued after June 12, 1994 by the Department of Treasury (see page 6). These organizations should present to the vendor a copy of their “exemption ruling letter.”

or

2. Organizations not previously certified as exempt must give the vendor the following information:

   A. A Certificate of Exemption (see page 50). This form may indicate in the “valid reason” section, “For use or consumption in connection with the operation of a nonprofit organization exempt from Federal income tax under section 501(c)(3) or 501(c)(4) of the IRC”;
and

B. A copy of the Federal exemption letter indicating 501(c)(3) or 501(c)(4) exempt status received from the Internal Revenue Service.

(A two-sided, one-page document could be used: one side the Certificate of Exemption, and the other a reproduction of the page in the federal ruling or determination letter that states recognition of tax-exempt status.)

This procedure does not apply to nonprofit schools, nonprofit hospitals, churches, or governmental agencies that have separate statutory exemption sections. These entities would provide their vendors with a claim of tax exemption on the Certificate of Exemption prescribed in the Department’s Revenue Administrative Bulletin, “Sales and Use Tax Exemption and Requirements,” on the basis of their being a school or a church, etc.

Nonprofit organizations interested in obtaining federal tax-exempt nonprofit status under the provisions of Internal Revenue Code Sections 501(3)(c) or 501(c)(4) should obtain Publication 557, “Tax Exempt Status for Your Organization,” from the Internal Revenue Service. The Michigan Department of Treasury does not determine nonprofit status, and no longer issues rulings on sales and use tax exempt status for individual organizations.

Sales by Certain Nonprofit Entities

Public Act 156 of 1994 (effective January 1, 1994) exempts from sales tax sales at retail made by certain organizations from tax if aggregate sales at retail for the calendar year are less than $5,000. Sales at retail are defined as transfers of ownership of tangible personal property. The following organizations qualify if they are nonprofit:

- schools
- churches
- hospitals
- parent cooperative preschools
- nonprofit entity with an exemption ruling letter signed by the administrator of the Sales, Use, and Withholding Taxes Division;
- Internal Revenue Code Section 501 (c)(3) federal income tax exempt entity;
- Internal Revenue Code Section 501(c)(4) federal income tax exempt entity.

Affiliated clubs, associations, auxiliaries or other organizations are not allowed a separate exemption under this provision. However, “school” is defined in such a way that each elementary, middle, junior, or high school site is allowed a separate exemption.

Nonprofit organizations making sales at retail are still required to register and obtain a sales tax license even if their total sales for the calendar year are less than $5,000 and they have no tax liability. Purchases of items intended for resale can only be purchased without payment of tax by making a claim of exemption on the Certificate of Exemption by reason of “for resale at retail.” A sales tax license is required before such a “resale” claim can be legally made.
Exemption is only available to those noted organizations who have total aggregate sales in a calendar year from all sales activity of less than $5,000. **If sales in the year are $5,000 or more, all sales are subject to tax.** This is not an exemption for the first $5,000 in sales. [MCL 205.54o; MSA 7.524(15)].

Regardless of the amount of total aggregate sales in the calendar year, if sales tax is charged to the customers, it must first be refunded to the customers before the exemption is allowed. Tax not refunded to the customers must be remitted to the State. This is to avoid unjust enrichment in accordance with section 23 of the General Sales Tax Act. [MCL 205.73; MSA 7.544].

**USE TAX**

Michigan's 6% use tax is imposed on a purchaser for the act of storing, using or consuming tangible personal property in Michigan. Use is defined as the exercise of any right over tangible personal property incident to ownership of that property.

The tax applies to storage, use or consumption of tangible personal property on which no Michigan sales tax has been paid. An offsetting credit is allowed of up to 6% for sales or use tax properly paid to another state with which Michigan is reciprocal. Michigan is reciprocal with most states that have a sales or use tax.

Generally, the tax will only apply to purchases of tangible personal property by nonprofit organizations from businesses or other persons located outside Michigan. Most commonly, it will apply to purchases where the tangible personal property is shipped by mail or common carrier directly to the nonprofit organization from a location outside of Michigan.

Many businesses located outside Michigan, or that have locations in Michigan but shipping from inventories located outside Michigan, are registered with the State of Michigan to collect and remit Michigan use tax from their customers. However, if tax is not itemized on billings, Michigan customers must remit 6% use tax directly to the State of Michigan. Organizations filing Michigan sales tax or income tax withholding forms may make payment on those same forms. Organizations not filing regular sales, use or withholding tax returns may pay their use tax liability on form C-3001 Individual Purchase Use Tax Return.

In addition to purchases of tangible personal property, use tax frequently applies to the receipts from rentals of tangible personal property. It also applies to telecommunication and similar services, as well as hotel, motel, and similar accommodations.

**Purchases by Nonprofit Organizations**

Public Act 424 of 1994 established an exemption in the Use Tax Act which was identical to that placed in the General Sales Tax Act by Public Act 156 of 1994 for sales to nonprofit organizations. The exemption was expanded to all federal income-tax-exempt organizations under section 501 (c)(3) or 501 (c)(4) of the Internal Revenue Code (IRC).
As with sales tax, two exemption avenues were established by Public Act 424. The first was a continuation of the exemption for organizations that had previously received an “exemption ruling letter” signed by the Administrator of the Sales, Use and Withholding Taxes Division dated after June 12, 1994. The second was to expand exemption to organizations without an “exemption ruling letter,” but having received Federal 501(c) (3) or 501(c) (4) tax exempt status from the Internal Revenue Service.

Public Act 424 which amended the Use Tax Act nonprofit exemption was filed and became law on January 5, 1995, retroactive to January 1, 1994. The previous discussion for sales tax concerning sales made to nonprofit organizations will have general application to purchases by nonprofit organizations that may be subject to the use tax. This includes the discussion that the exemption is limited to use or consumption of the item primarily in carrying out the purposes of the nonprofit organization as stated in the bylaws or articles of incorporation.

**Additional Information or Forms**

Additional information or forms may be obtained by writing to:

Sales, Use and Withholding Taxes Division  
Michigan Department of Treasury  
Treasury Building  
Lansing, Michigan 48922

or by telephoning (517) 373-3190

T-1001 (Rev. 1-91)
Effective Date

SAMPLE

This letter serves as notice to a seller that your organization qualifies to buy goods and services without paying the Michigan sales or use tax. **TREASURY DOES NOT ISSUE TAX EXEMPT NUMBERS.**

To buy goods and taxable services without paying a sales or use tax, present:

- a copy of this letter, and
- a completed certificate (below) certifying to the seller that the goods or services being purchased are for purposes of the organization and are being paid for from organizational funds. The seller must keep a copy of this certificate with the record of the sale.

Please note the following.

- This exemption does not apply to the purchase of tangible personal property or to the purchase of vehicles that are not used primarily to carry out the purposes of your organization as stated in your bylaws or articles of incorporation.
- Employees or members may NOT use this exemption to purchase goods or services for personal use.

The Michigan Department of Treasury may review your exempt status at any time to verify your eligibility. If the Internal Revenue Service revokes your exempt status, if a Treasury audit discovers non-exempt status, or if for any other reason your organization no longer qualifies for exemption, then your organization is subject immediately to sales or use tax on its purchases.

Please notify us if you have a name or address change. If you have questions, please contact this office at (517) 373-3190.

Sincerely,

Jesse A. Weaver, Administrator
Sales, Use and Withholding Taxes Division
CERTIFICATE REQUIRED FOR TAX EXEMPT SALES

I certify that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named above and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

Signature of Authorized Representative of Non Profit Organization

Date
SALES AND USE TAX
CERTIFICATE OF EXEMPTION

(Note: Blanket exemption certificates are not accepted or recognized by the State of Michigan.)

The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made under this certificate from:

________________________________________________________________________
(Vendor’s Name)

and contained on invoice No. ____________, or purchase order No. ____________, and certifies that this claim is based upon the purchaser’s proposed use of the items or services, the activity of the purchaser, or both, as shown hereon:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

PURCHASER MUST STATE A VALID REASON FOR CLAIMING EXEMPTION. In the event this claim is disallowed, the purchaser promises to reimburse the seller for the amount of tax involved.

____________________________________
Purchaser’s Name

____________________________________
Street Address

____________________________________
City   State   Zip Code

____________________________________
Signature and Title

____________________________________
Date Signed   Telephone No.

____________________________________
Sales Tax License No., if applicable

This certificate cannot be used by construction contractors to purchase material for incorporation into real property except under an exempt construction contract for nonprofit hospital or qualified nonprofit housing.
EFFECT OF COUPONS, REBATES AND DISCOUNTS ON THE SALES TAX BASE

(Replaces RAB 1990-9)

RAB-95-6. This bulletin describes how coupons, discounts and rebates affect the sales tax base when they are used with a sale at retail. This bulletin updates RAB 1990-9 by replacing the former sales tax rate with the 6% sales tax rate that became effective May 1, 1994, subsequent to an amendment to the Michigan Constitution 1963, art 9, 8. The sales tax rate was also increased statutorily by 1993 PA 325 which amended MCL 205.52(1); MSA 7.522.

INTRODUCTION

The Michigan Sales Tax Act, MCL 205.52(1); MSA 7.522, levies a 6% sales tax on the “gross proceeds” of most sales at retail. The Act defines gross proceeds as “...the amount received in money, credits, subsidies, property, or other money’s worth in consideration of a sale at retail...” [MCL 205.51(h); MSA 7.525(8) and Treasury Sales and Use Tax Rule, 1979 AC, R 205.10.] Therefore, the total amount received by a retailer in consideration for a retail sale is subject to the 6% sales tax. This bulletin explains and provides examples of the impact various coupons, discounts and rebates have on the gross proceeds used for the computation of the tax.

DISCOUNTS

For purposes of this bulletin, a discount is a reduction of an item’s price from the full or standard amount. A discount reduces the retailer’s gross proceeds from the sale and, therefore, reduces the base for computing the tax. [See Michigan Sales and Use Tax Rule, 1979 AC, R 205.22.] Examples 1 and 2 illustrate the effect of a discount on the sales tax base.

Examples Involving Discounts

1. A store liquidates inventory and offers a 20% discount on all merchandise sold. A customer purchases an item with an original price of $100. The store must compute the tax as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original price of item</td>
<td>$100.00</td>
</tr>
<tr>
<td>Minus 20% discount</td>
<td>-20.00</td>
</tr>
<tr>
<td>Gross proceeds received by seller</td>
<td>80.00</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>+ 4.80</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$84.80</td>
</tr>
</tbody>
</table>
2. A customer purchases a vehicle with a sticker price of $10,000. The buyer and dealer (seller) negotiate a lower price of $9,700. Tax is computed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original price of vehicle</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Minus the dealer discount</td>
<td>- 300.00</td>
</tr>
<tr>
<td>Gross proceeds received by dealer/seller</td>
<td>9,700.00</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>+ 582.00</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$10,282.00</td>
</tr>
</tbody>
</table>

**COUPONS**

For purposes of this bulletin, a coupon is a certificate, ticket, voucher or other document that the purchaser presents to the seller at the time of sale to reduce the purchase price of a particular item. The coupon amount may or may not reduce the gross proceeds subject to sales tax depending on the type of coupon the purchaser redeems. The relevant question is whether the coupon represents the seller’s cash discount offer or the manufacturer’s offer to share in a portion (or all) of the item’s purchase price.

**Store Coupons**

Retailers distribute “store coupons” for use in their stores. A particular retailer’s store coupon is generally of no value at another store. When a purchaser redeems a store coupon, the redemption amount reduces the transaction’s gross proceeds and thus reduces the sales tax base of the purchased item. [See Michigan Sales and Use Tax Rule, 1979 AC, R 205.22. See example 3 below.] Similarly, when a retailer accepts a competitor’s store coupon, the coupon amount reduces the gross proceeds of the transaction and thus reduces the sales tax base of the item being sold.

**Manufacturer’s Coupons**

Manufacturers sometimes distribute “manufacturer’s coupons” through newspapers and circulars for use at any retail store that accepts coupons. When a purchaser redeems a manufacturer’s coupon, the manufacturer will reimburse the retail seller for the coupon amount. This is, in effect, a sharing of the purchase price with the purchaser. Therefore, the coupon amount does not reduce the seller’s gross proceeds from the sale, because the seller receives the item’s full purchase price. [See example 4 below.]

A retailer who offers “double coupons” for manufacturer’s coupons reduces gross proceeds and the sales tax base by the amount the retailer added to value of the coupon. However, the face value of the coupon remains subject to tax as discussed above. [See example 5 below.]

Purchasers must pay sales tax for items obtained free of charge in exchange for a manufacturer’s coupon. [See example 6 below.]

Besides paying the retailer the coupon’s face value, a manufacturer may reimburse the retailer a certain amount for accepting its coupons. This reimbursement represents the retailer’s compensation for providing this service to the manufacturer. It is not included as part of the gross proceeds of the sale and does not add to the sales tax base.
Examples Involving Coupons

**Store Coupon**

3. A customer purchases a box of laundry soap for $3.00. The customer presents a “store coupon” redeemable for 50 cents off the purchase price of the laundry soap. The amount of gross proceeds that is subject to sales tax must be computed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original price of laundry soap</td>
<td>$3.00</td>
</tr>
<tr>
<td>Minus store coupon amount</td>
<td>- .50</td>
</tr>
<tr>
<td>Gross proceeds received by seller</td>
<td>2.50</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>+ .15</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$2.65</td>
</tr>
</tbody>
</table>

**Manufacturer’s Coupon**

4. A customer purchases a box of laundry soap for $3.00. The customer presents a “manufacturer’s coupon” redeemable for 50 cents off the purchase price. The amount of gross proceeds that is subject to sales tax is computed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original price of laundry soap</td>
<td>$3.00</td>
</tr>
<tr>
<td>Minus the manufacturer’s coupon amount</td>
<td>- .50</td>
</tr>
<tr>
<td>Manufacturer’s rebate to retailer</td>
<td>+ .50</td>
</tr>
<tr>
<td>Gross proceeds from sale</td>
<td>3.00</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>+ .18</td>
</tr>
<tr>
<td>Manufacturer’s contribution</td>
<td>- .50</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$2.68</td>
</tr>
</tbody>
</table>

5. A customer purchases a box of laundry soap for $3.00. The customer presents a “manufacturer’s coupon” redeemable for 50 cents off the purchase price. The seller is offering double the value off on manufacturer’s coupons. The amount of gross proceeds that are subject to sales tax is computed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original price of laundry soap</td>
<td>$3.00</td>
</tr>
<tr>
<td>Minus retailer’s discount (coupon face value)</td>
<td>- .50</td>
</tr>
<tr>
<td>Gross proceeds from sale subject to sales tax</td>
<td>2.50</td>
</tr>
<tr>
<td>Manufacturer’s coupon</td>
<td>- .50</td>
</tr>
<tr>
<td>Manufacturer’s rebate</td>
<td>+ .50</td>
</tr>
<tr>
<td>Gross proceeds from sale</td>
<td>2.50</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>+ .15</td>
</tr>
<tr>
<td>Manufacturer’s contribution</td>
<td>- .50</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$2.15</td>
</tr>
</tbody>
</table>
6. A customer is entitled to receive a free bath size bar of soap when presenting a coupon issued by the soap manufacturer.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling price of the bar of soap</td>
<td>$.39</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>.02</td>
</tr>
<tr>
<td>Manufacturer's contribution</td>
<td>-.39</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$.02</td>
</tr>
</tbody>
</table>

**REBATES**

For purposes of this bulletin, a rebate is a partial return of an item’s purchase price. After the purchaser buys the product, the manufacturer refunds the rebate amount. A rebate does not reduce the amount of gross proceeds received by the retailer and, therefore, does not reduce the amount that is subject to sales tax.

**Example Involving Rebates**

7. An individual purchases a vehicle for $10,000 for which the manufacturer offers a $1,000 rebate. Tax is computed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original price of vehicle</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Sales tax due to State (6%)</td>
<td>+ 600.00</td>
</tr>
<tr>
<td>Minus the rebate received from manufacturer</td>
<td>-1,000.00</td>
</tr>
<tr>
<td>Total due from customer</td>
<td>$ 9,600.00</td>
</tr>
</tbody>
</table>

**Unjust Enrichment**

The Michigan Sales Tax Act, MCL 205.73; MSA 7.544, provides: “[n]o other person other than the state may enrich himself or gain benefit from the collection or payment of such tax.” Retailers who do not deduct the correct amount when offering a store or manufacturer’s coupon incorrectly charge too much tax. The retailer must remit this amount to the Department.
SALES TAX REFUND PROCEDURES FOR MOTOR VEHICLE DEALERS AND OTHERS WHO PAY SALES TAX TO THE SECRETARY OF STATE AND FOR MOTOR VEHICLE MANUFACTURERS UNDER THE “LEMON LAW”

(Replaces Revenue Administrative Bulletin 1991-5)

RAB-95-9. This bulletin revisits the discussion in Revenue Administrative Bulletin (RAB) 1991-5 pertaining to the background of the motor vehicle sales tax refund, including past application of the law. It sets forth the sales tax refund procedure that motor vehicle dealers and others who pay sales tax to the Secretary of State must follow. This procedure applies to situations where: the customer returns the motor vehicle, mobile home, or water craft for a full purchase price refund; the sales transaction was improperly subjected to tax; the tax on the transaction was improperly calculated; and other situations in which refund of the sales tax is proper.

This bulletin updates RAB 1991-5 by including a discussion of Public Act 127 of 1994. This act amends the General Sales Tax Act to allow a full sales tax refund when a less-than-full purchase price refund is made for the return of a motor vehicle under the provisions of the “lemon law” [MCL 257.1401 et seq.; MSA 9.2705(1) et seq.]. This bulletin describes the new procedure for a sales tax refund associated with such manufacturer buy-back agreements which became effective August 1, 1994. Dealer buy backs are not covered by the provisions of the “lemon law.”

Background and the Law

In the past, the Department of Treasury refunded sales tax paid on motor vehicles, mobile homes, and watercraft returned to dealers for full refund or credit. The Department also issued refunds when the seller improperly computed or charged sales tax. Some dealers refunded the sales tax to the customer before requesting the refund, and others refunded the tax to the customer after receiving the refund.

The Department also issued sales tax refunds under manufacturer buy-back agreements mandated by the “lemon law.” Prior to May 1, 1991, these sales tax refunds were issued even when the manufacturer did not issue a full exchange, refund, or credit to the customer.

The policy described in the above paragraph was in direct conflict with Michigan Department of Treasury Sales and Use Tax Rule, 1979 AC, R 205.16, Returned Goods, which provides:

Credits or refunds for returned goods, the sales of which have been subject to tax, may be deducted only if the goods are voluntarily returned for full exchange, an entire refund of purchase price, or full credit. When the property is returned within a reasonable time after
the date of sale, and the purchase is made whole, a credit may be had on the tax paid on
the rescinded sale.

The rule clearly states that a sale is rescinded and qualifies for sales tax refund only if the
goods are voluntarily returned by the customer for full exchange, refund, or credit.

However, an exchange or refund associated with a manufacturer's buy-back under the
"lemon law" was not considered a rescinded sale when an allowance for use was deducted.
A manufacturer buy-back was a rescinded sale and qualified for a sales tax refund only if a
full and complete exchange, refund, or credit of the original purchase price was given to the
original purchaser. Therefore RAB 1991-5 revoked the previous sales tax refund procedure
for manufacturer buy-backs under the "lemon law” outlined in Letter Ruling 89-22 because
it was not limited to rescinded sales as defined above.

Public Act 127 of 1994, effective August 1, 1994, amended the definition of “gross
proceeds” in the General Sales Tax Act as follows:

... A credit or refund for returned goods or a refund less an allowance for use made for
a motor vehicle returned under Act No. 87 of the Public Acts of 1986, being sections
257.1401 to 257.1410 of the Michigan Compiled Laws, as certified by the manufacturer
on a form provided by the department of treasury, may be deducted. (Amendment
underscored) [MCL 205.51(h); MSA 7.521(h)]

Application of the Law

With this amendment, the definition of a rescinded sale that qualifies for a sales tax refund
now includes the return of a motor vehicle under the provisions mandated by the “lemon
law.” These provisions allow the seller to reduce the refund by the amount attributed to the
consumer’s use or damage not attributable to normal use or to the defect or condition. The
consumer’s use is calculated at 10 cents per mile or 10 percent of the purchase price of
the vehicle, whichever is less. The seller must get an appraisal for damage not related to
normal use or to the actual "lemon law" defect.

A refund to the consumer that deducts the consumer’s use, appraised damage beyond
normal use, or mileage is not a rescinded sale unless the provisions of the "lemon law” are
followed and certified by the manufacturer (see procedure below). Any other partial refund
or credit, or an exchange for less than the original purchase price, is not a rescission;
therefore, sales tax paid on the original price will not be refunded.

The trade-in of a vehicle on another purchase, that is not a lemon law buy back, is not a
rescinded sale unless the consumer returns the vehicle to the original dealer and the credit
is equal to the full price of the original purchase.

The statute of limitations for claiming a refund is four years from the original payment date
[MCL 205.59(3); MSA 7.5301(3)]. Any tax paid prior to that time shall not be refunded.
General Sales Tax Refund Procedure

To obtain timely refunds of the sales tax, dealers and manufacturers should claim a credit on their next filing of the Sales and Use Tax Worksheet. This worksheet can be found in the General and Line-by-Line Instructions for Sales Tax, Use Tax, Income Tax Withholding, and Single Business Tax Estimates booklet, form C-3091.

The dealer or manufacturer must deduct the amount of the rescinded sale or improperly taxed sale on line “Other. Identify: _____” under ALLOWABLE DEDUCTIONS, in the Sales Tax column of the return worksheet. When deducting only a portion of the tax paid (because the tax was improperly calculated), multiply the amount of tax incorrectly charged by 16.667 to arrive at the amount to be entered in the Sales Tax column on line “Other. Identify: _____.” (Multiply by 25, if the transaction was prior to May 1, 1994 and the applicable tax rate was four percent.) Do not include sales tax in the amount on this line unless it is also included on line “Tax included in gross sales” under ALLOWABLE DEDUCTIONS.

The amount entered in the Sales Tax column on line “Other. Identify: _____” will reduce line “Taxable balance” on the worksheet by the amount of the deductions. This will reduce line “Gross tax due” in the Sales Tax column of the worksheet. This reduction may result in a negative sales tax liability. A negative sales tax liability should be used to reduce any “Gross tax due” in the Use Tax column(s), or any withholding due from line “Michigan income tax withheld” in the Withholding Tax section of the worksheet. Enter the net amount of tax due on the return.

If a negative sales tax liability remains, do not enter a credit figure on the return itself as this may cause an assessment. If the credit is more than the tax due for the period, file a return indicating no tax due and carry the credit forward on the worksheet until the credit is depleted.

A dealer who claims a sales tax refund under this procedure must retain all documentation regarding the credit for audit purposes, including proof that a full exchange, refund, or credit was given to the purchaser.

Sales Tax Refund Procedure for Manufacturer Buy-Back Agreements Under the “Lemon Law”

Manufacturers who file Michigan sales, use and withholding tax returns should refund to the consumer, and follow the general refund procedures described in this bulletin. Public Act 127 of 1994 requires that the manufacturer retain the following documentation for “lemon law” refunds including an allowable deduction for use:

1. An affidavit in the form of the sample appearing at the end of this bulletin; and

2. A copy of the consumer’s written notification of the defect or condition to the manufacturer as required by the lemon law, MCL 257.251; MSA 9.1951.
For transactions involving an out-of-state manufacturer who does not file Michigan sales, use, and withholding tax returns either the consumer or the manufacturer may request a refund of Michigan tax paid on the returned vehicle. To request a refund, the manufacturer or consumer must submit all of the following documents:

1. Copy of title application (forms RD-108 or TR-11C) of original purchaser showing validations as proof of Michigan tax paid.

2. Copy of the manufacturer’s buy-back agreement or arbitration decision stating the buy-back dollar figure given to the original purchaser.

3. Consumer’s social security number, if the refund will be issued directly to the consumer.

The above items shall be submitted to:

Michigan Department of Treasury;
Sales, Use, and Withholding Taxes Division;
Lansing, MI 48922

Note: A dealer is not a principal in “lemon law” buybacks. Therefore, dealers should not refund to consumers nor claim credits for “lemon law” buybacks on their sales, use, and withholding tax returns.

The manufacturer must retain an affidavit similar to the one on the following page to document each “lemon law” refund.

**AFFIDAVIT TO BE COMPLETED WHEN CREDIT IS GRANTED OR REFUNDED FOR A RETURNED MOTOR VEHICLE UNDER ACT 87 OF THE PUBLIC ACTS OF 1986**

The undersigned hereby certifies that they have accepted return of the following new motor vehicle,__________________________, _________________________ from ______________________________, Year, Make & Model V.I.N. Number Consumer’s Name

and has replaced the motor vehicle or issued a refund on ________ to the above named consumer Date

in accordance with the provisions of Public Act 87 of 1986.

<table>
<thead>
<tr>
<th>Full Original Purchase Price</th>
<th>Less: Allowance for Consumer’s Use</th>
<th>Less: Appraised Damage Not Attributable to Normal Use or to the Defect or Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>__________________________</td>
<td>________________________________</td>
<td>______________________________________</td>
</tr>
</tbody>
</table>

____________________________________
Manufacturer
SALES AND USE TAX EXEMPTIONS AND REQUIREMENTS

(Replaces Revenue Administrative Bulletin 1990-32)


BACKGROUND

Section 17 of the General Sales Tax Act [MCL 205.67; MSA 7.538] lists the information that must be included in supporting a claim for exemption from sales tax:

“If an exemption from sales tax is claimed because the sale is for resale or for any of the other exemptions or deductions granted under this act, a record shall be kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the use to be made of the article, and the amount of the sale, and if that person has a sales tax license, that number shall also be included.”

Section 14 of the Use Tax Act [MCL 205.104; MSA 7.555(14)] and Department of Treasury Sales and Use Tax Administrative Rule, 1979 AC, R 205.23(5), reiterate these requirements.

Public Act 132 of 1994 amended Section 17 of the General Sales Tax Act by adding the following:

“If a taxpayer maintains the records required under this section, and accepts an exemption certificate from the buyer in good faith on a form prescribed by the department, the taxpayer is not liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption under this act. As used in this section, “good faith” means that the taxpayer exercised reasonable care and effort to determine that the purchaser was entitled to the exemption being claimed (emphasis added).”

Section 17 of the General Sales Tax Act was also amended by Public Act 254 of 1995 to include the following:

For purposes of this section, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a period of 3 years or for a period of less than 3 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.
TAX EXEMPTION NUMBERS

The Michigan Department of Treasury does not issue “tax exemption numbers” for any type of organization. Sellers should not accept a “number” as evidence of exemption from sales and use taxes. (However, a sales tax license number may support a tax exemption claim based on “for resale at retail” as described later in this bulletin.)

CERTIFICATE OF EXEMPTION — SINGLE PURCHASE

The Department’s prescribed form for the Certificate of Exemption is included in this bulletin. The Department will also accept any exemption certificate contained in a Sales and Use Tax Administrative Rule, the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission and as discussed later in this bulletin, a purchase order issued by the purchaser. Collectively, these items are referred to as “exemption claims”, and represent the only acceptable formats.

An exemption claim must be presented by the purchaser to the seller. Whether or not an exemption is allowed depends on the type of organization purchasing the item(s), the activity of the purchaser or the proposed use of the item(s). Characterization by the purchaser that the sale is exempt is not, in itself, proof of exemption.

If the seller accepts, in good faith, the exemption claim, the seller will not be liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption. As defined by Public Act 132 of 1994, “good faith” means the seller exercised reasonable care and effort to verify the buyer’s entitlement to the exemption.

Reasonable care would include such activities as consulting the Michigan Sales and Use Tax Acts and Administrative Rules or submitting facts to the Department for an opinion. In conjunction with consulting Michigan’s sales and use tax laws and specific rules, reasonable care could also be demonstrated by the seller’s consideration of the buyer’s business activity, the nature of the item, its intended use, and the specific quantity being purchased.

BLANKET EXEMPTION CLAIMS

Blanket exemption certificates are accepted by the State of Michigan. The statutory language of Section 17 of the General Sales Tax Act [MCL 205.67; MSA 7.538] requires that the blanket exemption certificate cover a three year period, unless the buyer and the seller mutually agree upon a shorter period.

A blanket exemption claim is limited to a completed Certificate of Exemption, any exemption certificate contained in a Sales and Use Tax Administrative Rule, or the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, filed once and maintained in the seller’s records, which states that all of the defined purchases made by
the presenter of the certificate are exempt from tax. This claim is subject to the good faith provisions as described previously. Therefore, the seller must exercise reasonable care and effort to determine that the purchaser is entitled to the exemption. If the seller becomes aware that an item will be used in a taxable manner rather than the exempt use stated on the certificate, the items purchased must be taxed.

For example, a purchaser, who usually buys widgets, submits a blanket exemption certificate to the seller for industrial processing and subsequently purchases a coffee pot from the same seller. It is reasonable for the seller to determine that the coffee pot will not be used in industrial processing. Tax must be charged on the sale of the coffee pot. However, if the purchaser uses some of the widgets, covered by the blanket certificate, to repair a delivery truck, the purchaser incurs the incidence of the tax and must compute its use tax liability and pay the tax due directly to the State of Michigan.

**PURCHASE ORDERS**

Statements of taxability or exemption contained on purchase orders that are given to a seller after a Certificate of Exemption or any exemption certificate contained in a Sales and Use Tax Administrative Rule, but before consummation of the sale transaction, will take precedence and be controlling for tax purposes. If such a purchase order states that the purchase is subject to tax and the purchaser has also previously issued a blanket exemption claim, the seller is liable for sales tax on the purchase. The seller cannot rely on the blanket claim of exemption for the taxable sale, because he had knowledge of the taxability of the sale and the statute imposes a good faith responsibility on the seller. It should be noted that purchasers should carefully review their use of blanket exemption claims, and limit situations where conflicting purchase orders are not anticipated or expected.

**Single Purchases**

For a single purchase from a seller, a purchase order may support a tax exemption claim by making a clear statement of exemption that includes all the information required by Section 17.

**Multiple Purchases**

Blanket exemption certificates may be used when the purchaser makes multiple purchases of exempt items from a seller.

When a purchaser buys both exempt and taxable items from the same seller, the certificate must identify the exempt items covered. The seller remains liable for tax on items not specifically listed on the exemption certificate.

If a purchaser submits a blanket exemption claim for all items being acquired, but purchases both exempt and taxable items from the same seller and the seller accepts the claim in good faith, the purchaser is liable for the use tax on the items subject to tax.
EXAMPLES OF BLANKET EXEMPTION CLAIMS

1. The sale of electricity on a monthly basis to a customer is not considered to be a continuous sale but rather numerous individual retail sales. The sale each month of a specific amount of electricity is a retail sale subject to tax. A seller of electricity may accept blanket exemption certificates if the use of the electricity is exempt.

2. An exempt nonprofit hospital continually purchases supplies and equipment for its own use from a specific seller. The seller may accept a blanket exemption claim from the hospital.

3. A seller accepts a blanket exemption claim provided by a school. However, school employees are making personal purchases for cash under the school name. These personal purchases are not covered by the blanket exemption claim and will not be exempt. In this instance, the seller must use reasonable care in making this determination.

4. A seller accepts a blanket exemption claim from a particular customer. On a subsequent sale, a purchase order is issued in which the customer states that the purchase is taxable. The customer’s purchase order will overrule the blanket exemption for that specific purchase, and the sale does subject the seller to tax.

5. A seller of bolts accepts a blanket exemption claim from a manufacturer who purchases a large quantity of bolts on a weekly basis. The seller makes this decision based on his knowledge of the purchaser’s business activity, the nature of the item and the specific quantity being purchased.

NOTE: These examples illustrate situations in which blanket exemption claims may be used and the tax effect. The examples are not intended to be all-inclusive or restrictive.

VARIOUS STATUTORY EXEMPTIONS

An exemption claim must be presented to the seller prior to or when tangible personal property is sold. The buyer must state a valid reason for claiming exemption. The more common exemptions allowed by the General Sales Tax Act and the Use Tax Act are listed below.

Sales for Resale

Section 2 of the General Sales Tax Act [MCL 205.52; MSA 7.522] imposes the sales tax only upon sales at retail. Thus, sales of property intended for resale are exempt. A Certificate of Exemption, any exemption certificate contained in a Sales and Use Tax Administrative Rule, Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable) should indicate the reason for claiming exemption as “For resale at retail.” Retailers in Michigan are issued sales tax
license numbers. The purchaser's sales tax license number must also be included on the exemption form.

Wholesalers, **that make no retail sales**, are not licensed with the Department and are not issued numbers. Wholesalers buying for resale should indicate on the Certificate of Exemption, any exemption certificate contained in an Administrative Rule, the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable) “For resale at wholesale.”

**Sales to Agricultural Producers**

A sale to a person for use or consumption in agricultural production is exempt from tax, provided the items are used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. [MCL 205.54a(f); MSA 7.525(f) and MCL 205.94(f); MSA 7.555(4)(f), and Department of Treasury Sales and Use Tax Rule, 1979 AC, R 205.51]

**Sales to Industrial Processors (Manufacturers)**

Industrial processing is the act of transforming, altering, or modifying tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail, or sale to another industrial processor for further processing and ultimate sale at retail. The sale of property to a manufacturer or industrial processor for use or consumption in industrial processing is exempt from sales tax. [MCL 205.54a(g); MSA 7.525(g)] and [MCL 205.94(g); MSA 7.555(4)(g)]

**Sales to Governmental Entities**

Section 4 of the General Sales Tax Act [MCL 205.54(6); MSA 7.524(5)] and Michigan Sales and Use Tax Administrative Rule, 1979 AC, R 205.79, provide that sales to the United States government, the State of Michigan, and their political subdivisions, departments and institutions, and the American Red Cross and its chapters and branches are not taxable when ordered on a governmental purchase order and paid for by warrant on government funds. At the time of purchase the governmental entity should indicate on the Certificate of Exemption, any exemption certificate contained in an Sales and Use Tax Administrative Rule, or Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission that payment is from funds of the governmental entity. Sales to other States or their departments are subject to tax.

**Sales Not for Resale to Nonprofit Schools, Nonprofit Hospitals, and Churches**

The sale of tangible personal property to a nonprofit school, parent cooperative preschool, nonprofit hospital, or regularly organized church or house of religious worship is exempt, provided the property will be used or consumed in connection with the operation of the institution or agency, and that the institution or agency qualifies as an exempt entity under the law. [MCL 205.54a(a),(b); MSA 7.525(a),(b); Department of Treasury Sales and Use Tax Rules, 1979 AC, R 205.74, R 205.87, and R 205.65]
Sales Not for Resale to Other Nonprofit Organizations

In order to qualify for this exemption, the tangible personal property purchased must be used or consumed primarily in carrying out the purposes of the institution or agency, as stated in the bylaws or articles of incorporation of the exempt entity.

Sales of tangible personal property to these organizations are exempt from tax provided:

1. Health, welfare, educational, cultural arts, charitable, or benevolent organizations previously certified as exempt, must present the “exemption ruling letter,” signed by the Administrator of the Sales, Use, and Withholding Taxes Division of the Department, reissued after June 12, 1994 (sample copy attached);

OR

2. Organizations not previously certified as exempt must:

   1) Present a Certificate of Exemption, any exemption certificate contained in an Administrative Rule, Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable), completed in accordance with Section 17 of the General Sales Tax Act, indicating “For nonprofit organization exempt from Federal income tax under section 501(c)(3) or 501(c)(4) of the IRC”; and

   2) Include a copy of their Federal exemption letter. (A two-sided, one-page document could be utilized--one side the Certificate of Exemption, and the other a reproduction of the page in the Federal ruling or determination letter that states recognition of tax-exempt status.)

Please see Revenue Administrative Bulletin 1995-3 regarding non-profit organizations. [General Sales Tax Act MCL 205.54n[1]; MSA 7.525(14) and Use Tax Act MCL 205.94(aa); MSA 7.555(4)(y)]

For questions related to this Revenue Administrative Bulletin please call the Sales, Use and Withholding Taxes Division-Technical Section at (517) 373-3190 or write to them at Treasury Building, Lansing, Michigan 48922.
REVENUE ADMINISTRATIVE BULLETIN 2000-1  
Approved: April 20, 2000  

INTEREST RATE  
For period: July 1, 2000 - December 31, 2000  
(Replaces Revenue Administrative Bulletin 1999-6)  

RAB-2000-1. This bulletin establishes the annual rate of interest due on underpayments and overpayments for the period beginning on July 1, 2000 and ending on December 31, 2000.

A daily rate of interest of .0002596 based on an adjusted annual rate of 9.5% shall be added to a tax deficiency or an excessive claim for the period stated above. The effective annual rate of 9.5% was established pursuant to section 23(2) of the revenue act, MCL 205.23(2); MSA 7.657(23)(2), at one percentage point above the adjusted prime rate charged by three commercial banks to large businesses.

The rates of interest as announced in this bulletin also apply to overpayments as added under MCL 205.30(1); MSA 7.657(30)(1) for periods after March 31, 1993. The rate of interest for periods prior to April 1, 1993 remains at the annual rate of 9%.

The following annual and corresponding daily rates of interest are in effect and will accrue during these periods:

<table>
<thead>
<tr>
<th>Period</th>
<th>Rate</th>
<th>Daily Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 1967 - June 30, 1986</td>
<td>9.0%</td>
<td>.0002466</td>
</tr>
<tr>
<td>July 1, 1986 - December 31, 1986</td>
<td>10.4%</td>
<td>.0002849</td>
</tr>
<tr>
<td>January 1, 1987 - June 30, 1987</td>
<td>9.2%</td>
<td>.0002521</td>
</tr>
<tr>
<td>July 1, 1987 - December 31, 1987</td>
<td>8.5%</td>
<td>.0002329</td>
</tr>
<tr>
<td>January 1, 1988 - June 30, 1988</td>
<td>9.2%</td>
<td>.0002514</td>
</tr>
<tr>
<td>July 1, 1988 - December 31, 1988</td>
<td>9.7%</td>
<td>.0002650</td>
</tr>
<tr>
<td>January 1, 1989 - June 30, 1989</td>
<td>10.2%</td>
<td>.0002795</td>
</tr>
<tr>
<td>July 1, 1989 - December 31, 1989</td>
<td>11.6%</td>
<td>.0003178</td>
</tr>
<tr>
<td>January 1, 1990 - June 30, 1990</td>
<td>12.0%</td>
<td>.0003288</td>
</tr>
<tr>
<td>July 1, 1990 - December 31, 1990</td>
<td>11.3%</td>
<td>.0003096</td>
</tr>
<tr>
<td>January 1, 1991 - June 30, 1991</td>
<td>11.0%</td>
<td>.0003014</td>
</tr>
<tr>
<td>July 1, 1991 - December 31, 1991</td>
<td>10.6%</td>
<td>.0002904</td>
</tr>
<tr>
<td>January 1, 1992 - June 30, 1992</td>
<td>9.5%</td>
<td>.0002596</td>
</tr>
<tr>
<td>July 1, 1992 - December 31, 1992</td>
<td>8.1%</td>
<td>.0002213</td>
</tr>
<tr>
<td>January 1, 1993 - June 30, 1993</td>
<td>7.3%</td>
<td>.00002</td>
</tr>
<tr>
<td>July 1, 1993 - December 31, 1993</td>
<td>7.0%</td>
<td>.0001918</td>
</tr>
<tr>
<td>January 1, 1994 - June 30, 1994</td>
<td>7.0%</td>
<td>.0001918</td>
</tr>
<tr>
<td>July 1, 1994 - December 31, 1994</td>
<td>7.0%</td>
<td>.0001918</td>
</tr>
<tr>
<td>January 1, 1995 - June 30, 1995</td>
<td>8.2%</td>
<td>.0002247</td>
</tr>
<tr>
<td>July 1, 1995 - December 31, 1995</td>
<td>9.5%</td>
<td>.0002603</td>
</tr>
<tr>
<td>January 1, 1996 - June 30, 1996</td>
<td>9.9%</td>
<td>.0002705</td>
</tr>
<tr>
<td>July 1, 1996 - December 31, 1996</td>
<td>9.5%</td>
<td>.0002596</td>
</tr>
<tr>
<td>January 1, 1997 - June 30, 1997</td>
<td>9.25%</td>
<td>.0002534</td>
</tr>
<tr>
<td>July 1, 1997 - December 31, 1997</td>
<td>9.3%</td>
<td>.0002548</td>
</tr>
<tr>
<td>January 1, 1998 - June 30, 1998</td>
<td>9.5%</td>
<td>.0002603</td>
</tr>
<tr>
<td>July 1, 1998 - December 31, 1998</td>
<td>9.5%</td>
<td>.0002603</td>
</tr>
<tr>
<td>January 1, 1999 - June 30, 1999</td>
<td>9.5%</td>
<td>.0002603</td>
</tr>
<tr>
<td>July 1, 1999 - December 31, 1999</td>
<td>8.8%</td>
<td>.0002411</td>
</tr>
<tr>
<td>January 1, 2000 - June 30, 2000</td>
<td>8.9%</td>
<td>.0002432</td>
</tr>
<tr>
<td>July 1, 2000 - December 31, 2000</td>
<td>9.5%</td>
<td>.0002596</td>
</tr>
</tbody>
</table>
Example: Taxpayer A, who files on a calendar year basis, filed an MI-1040 return for 1997 showing tax due of $1,500.00. If the tax is not paid until August 15, 2000 the amount of interest calculated due from April 16, 1998 to August 15, 2000 is as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Calculation</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 16, 1998 - June 30, 1998</td>
<td>74 days x .0002603 x $1,500</td>
<td>28.89</td>
</tr>
<tr>
<td>July 1, 1998 - December 31, 1998</td>
<td>184 days x .0002603 x $1,500</td>
<td>71.84</td>
</tr>
<tr>
<td>January 1, 1999 - June 30, 1999</td>
<td>181 days x .0002603 x $1,500</td>
<td>70.67</td>
</tr>
<tr>
<td>July 1, 1999 - December 31, 1999</td>
<td>184 days x .002411 x $1,500</td>
<td>66.54</td>
</tr>
<tr>
<td>January 1, 2000 - June 30, 2000</td>
<td>182 days x .0002432 x $1,500</td>
<td>66.44</td>
</tr>
<tr>
<td>July 1, 2000 - December 30, 2000</td>
<td>46 days x .0002596 x $1,500</td>
<td>17.91</td>
</tr>
</tbody>
</table>

Total Interest: $322.29  
Tax Due $1,822.29
REVENUE ADMINISTRATIVE BULLETIN 2002-13
Approved: May 24, 2002

NOTICE OF CHANGE IN PREPAID GASOLINE SALES TAX RATE

(Replaces Revenue Administrative Bulletin 2002-1)
(Replaced by Revenue Administrative Bulletin 2002-18)

RAB 2002-13. This Revenue Administrative Bulletin (RAB) announces a change in the prepaid gasoline sales tax rate, and describes the prepayment of gasoline sales tax and the corresponding rate determination, MCL 205.56a; MSA 7.527(1). This RAB supersedes RAB 2002-1.

ISSUES

I. What is the new rate?
II. Why do we need to change rates?
III. What is the recent historical information on the rate?

CONCLUSIONS

I. Effective August 1, 2002, the new prepaid gasoline sales tax rate is 5.8 cents per gallon.
II. The rate change is necessitated by MCL 205.56a, Section 6a(2), which requires the department to determine the rate every six months unless the change in the price of a gallon of gasoline has been less than 10%. The rate shall be determined not less than annually.
III. 
   a. Effective May 1, 1994, through July 31, 1999, the rate was established at 5.4 cents per gallon.
   b. Effective August 1, 1999, through December 31, 1999, the rate was established at 4.6 cents per gallon.
   c. Effective January 1, 2000, through August 31, 2000, the rate was established at 5.7 cents per gallon.
   d. Effective September 1, 2000, through February 28, 2001, the rate was established at 6.8 cents per gallon.
   e. Effective March 1, 2001, through February 28, 2002, the rate was established at 8.1 cents per gallon.
   f. Effective March 1, 2002, through July 31, 2002, the rate was established at 7.9 cents per gallon.

LAW & ANALYSIS

As provided in Section 6a of the General Sales Tax Act [MCL 205.56a; MSA 7.527(1)], at the time of purchase or shipment from a refiner, pipeline terminal operator, or marine terminal operator, a purchaser or receiver of gasoline shall prepay a portion of the sales tax at a rate determined and certified by the department. The department must determine the
rate every six months unless the change in the statewide average retail price of a gallon of self-serve unleaded regular gasoline has been less than 10% during the six month period. However, the department must determine and adjust the rate not less than annually, regardless of the percentage change.

The last review by the department covered gasoline prices for the six month period May 1, 2001, through October 31, 2001, and resulted in a determination and change in the rate to 7.9 cents per gallon. The review most recently completed examined the gasoline prices for the six month period November 1, 2001, through April 30, 2002. The change in the price of gasoline falls outside the 10% statutory criteria. Therefore, a determination and change to the 5.8 cents per gallon rate is being announced.

Questions may be directed to:
Michigan Department of Treasury
Technical Services Division
430 W. Allegan Street
Lansing, MI 48922
Telephone (517) 241-3650
SALES AND USE TAX GUIDELINES FOR DISTINGUISHING BETWEEN THE SALE OF A SERVICE AND THE SALE OF TANGIBLE PERSONAL PROPERTY

RAB 2004-3. This bulletin replaces RAB 1995-1. The “real object test” advocated by RAB 1995-1 is rescinded and should no longer be used. The “real object test” is replaced by the “incidental to service test” prescribed by the Michigan Supreme Court in its opinion of May 5, 2004 for Catalina Marketing v Department of Treasury, __ Mich __; 678 NW 2d 619 (2004).

OVERVIEW OF DECISION

Catalina Marketing Sales Corporation v Department of Treasury
470 Mich 13; 678 NW2d 619 (May 5, 2004)

Held: The Michigan Tax Tribunal and the Court of Appeals erred in following RAB 95-1 rather than the “incidental to service” test set forth in University of Michigan Board of Regents v Department of Treasury, 217 Mich App 665; 553 NW2d 349 (1996). The Supreme Court adopted the “incidental to service” test for categorizing a business relationship involving both the provision of services and the transfer of tangible personal property as either a service or a tangible property transaction. The case concerned whether petitioners’ checkout coupon program, involving both the transfer of tangible personal property and the provision of services, constituted a sale at retail subject to sales tax. Applying a narrow version of the “real object test” set forth in RAB 95-1, the Tax Tribunal ruled the direct object of the transaction was the coupon petitioners provided and thus, the entire transaction was subject to the sales tax. The court held this test was not consistent with the statutory definition of “sale at retail.”

The Court held that sales tax will not apply to a transaction where, looking objectively at the entire transaction, the transaction is principally the provision of a service, even though tangible personal property is exchanged incidentally. If the consideration paid in a transaction is not paid for the transfer of the tangible personal property, but for the service provided, and the transfer of the tangible property is only incidental to the service provided, the transaction is not a sale at retail under MCL 205.51(b). The Supreme Court set forth the following factors to be applied by a court when determining whether the transfer of tangible personal property is incidental to the provision of services: (1) what the buyer sought as the object of the transaction, (2) what the seller or service provider is in the business of doing, (3) whether the goods were provided as a retail enterprise with a profit-making motive, (4) whether the tangible goods were available for sale without the service, (5) the extent to which intangible services have contributed to the value of the physical item that is transferred, and (6) any other factors relevant to the particular transaction. The Court vacated the Court of Appeals opinion and remanded to the Tax Tribunal for application of the “incidental to service” test. The court retained jurisdiction.
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