



# Automobile Dealers Association of Indiana, Inc.

BULLETIN

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## **Indiana Department of Revenue Increases Taxation of Demonstrator Automobiles**

By: *Michael P. Shanahan, Esq., Stewart & Irwin P.C.*

The Indiana Department of State Revenue (the “Department”) amended its Tax Policy Directive No. 8 (the “Directive”) in November of 2008. The Directive sets out the Department’s official position relative to the application of Indiana Sales and Use Tax as it applies to the use of new and used demonstrator automobiles by dealerships. The amendments made by the Department increase dealership liability.

A copy of the new Directive can be found on the Department’s website at the following address: <http://www.in.gov/dor/reference/files/poldir08.pdf>. Key amendments to the Directive and the corresponding increases in liability include:

1. Prior to the current amendments, the Department did not define the type of vehicles eligible for demonstrator treatment. The Directive now limits demonstrators to “four-wheeled cars, trucks, or vans having a gross weight of not more than 6,000 pounds, which are made primarily for use on public streets, roads, or highways.” The Department specifically excludes recreational vehicles, and by its definition, does not include motorcycles or heavier cars and trucks.
2. The Directive provided and still provides two methods for calculating the sales/use tax due on demonstrators provided to other than full-time salespersons (e.g., family members, part-time salespersons, mechanics, managers of the dealership and other individuals). The two methods are separated by their record keeping requirements:
  - a. If a dealership keeps track of the miles driven in each demonstrator, among other items, the dealership may calculate its use tax liability by multiplying the Internal Revenue Service’s optional business standard mileage rate times the Indiana sales tax rate. Prior to the amendment, the Directive set the amount at Twenty Cents (\$0.20) times the Indiana sales tax rate. The amendment results in a use tax liability of approximately (depending on the current IRS mileage rate) 2 ½ times more the old calculation.

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- b. If the dealership does not keep the appropriate records, which is generally the case, the dealership may calculate its use tax liability by multiplying the value of each demonstrator by the current Indiana sales tax rate times the number of months (or fraction of a month) that the vehicle is used as a demonstrator times 8%. This calculation was available under the Directive prior to it being amended with a 2% factor opposed to the now 8% factor. Under this method, the amendment results in a 400% increase in liability. Additionally, for a vehicle that is in demonstrator status during the entire year, the dealership is paying 96% of what it would have to pay in sales tax were it to have purchased the vehicle.

The above described amendments do not affect a dealership's sales/use tax liability on demonstrators used by full-time salespersons except to the extent of what type of vehicle can be a demonstrator. Otherwise, the Department's definition of a full-time salesperson and the resulting tax liability remained unchanged.

Regardless, the Department gave no warning of the changes it made. Michael Shanahan, an Attorney with Stewart & Irwin P.C., and Marty Murphy, the Executive Director of the Automobile Dealers' Association of Indiana, have been in contact with the Department and intend to meet with them to discuss the ramifications of the amendments to the Directive as well as possible revisions to the Directive. Until that time, please consult your tax advisor to determine if you are properly accounting for and remitting the sales/use tax due on your demonstrators.

If you have questions regarding this article, you may contact me directly at (317) 396-9521 or [mshanahan@silegal.com](mailto:mshanahan@silegal.com).

## **TAX POLICY DIRECTIVE #8**

**NOVEMBER 2008**

**(Replaces Tax Policy Directive #8 dated January 2003)**

**PURPOSE:** Tax Policy Directives are intended to provide the general public with information concerning the Department's official position in regard to a specific issue. These directives can be relied on by taxpayers until superseded by another policy directive, a change in statute or regulation, or a court decision that would render the policy directive void.

**SUBJECT:** Application of Sales and Use Tax to Demonstrator Automobiles

**REFERENCES:** IC 6-2.5-3-2; U.S. Treasury Reg. 1.132-5(o)(2); Revenue Procedure 2001-56; IC 9-13-2-42; IRS Publication 463 (2007)

### **INTRODUCTION**

The purpose of this Directive is to provide interpretation of the Indiana Sales and Use Tax as it applies to the use of demonstrator automobiles, both new and used. "Automobile" or "vehicle" as used in this Directive includes four-wheeled cars, trucks, or vans having a gross weight of not more than 6,000 pounds, which are made primarily for use on public streets, roads, or highways. "Automobile" or "vehicle" does not include recreational vehicles. This Directive is applicable to Indiana dealers as defined in IC 9-13-2-42(a). This Directive is applicable to all persons operating a vehicle with a dealer license plate.

## DISCUSSION

The following instructions are effective as of the date of issuance of this Directive.

1. Vehicles made available to school driver-education programs or not-for-profit organizations are not subject to the Indiana sales and use tax.
2. Vehicles provided to other than full-time salespersons (for example, family members, part-time salespersons, mechanics, managers of the dealership and other individuals) are subject to use tax at the Internal Revenue Service's optional business standard mileage rate times the Indiana sales tax rate. The vehicle dealer pay the tax annually. Dealers are required to keep records of each vehicle, the miles driven, and when use tax was paid for the miles driven.
3. In lieu of accounting for the miles driven, the dealer may elect to report the use tax on 8 percent of the dealer's cost of purchasing the vehicle for each month (or fraction of a month) that the vehicle is used as a demonstrator times the Indiana sales tax rate.
4. The definition of full-time salesperson is synonymous with the definition provided in U.S. Treasury Reg. 1.132-5(o)(2), which provides that the salesperson spends at least one half of a normal business day performing the function of a floor salesperson; work at least 1,000 hours per year; and derive 25 percent of his/her gross income from sales activities. Vehicles used by full-time salespersons for "qualified automobile demonstration use" are not subject to sales and use tax. "Qualified automobile demonstration use" means a vehicle:
  - a. That is currently in the inventory of the dealership;
  - b. That is available for test drives by customers during the normal business hours of the employer;

- c. In which the salesperson has no personal possessions stored;
  - d. That must be driven within the dealer's sales area. For the purposes of this directive, "dealer's sales area" means an area within a radius of 75 miles from the dealership;
  - e. That is not used by individuals other than the full-time salesperson (for example, family members); and
  - f. That may not be used for personal trips.
5. Personal use of automobile demonstrators by full-time salespersons will be the value reportable to the Internal Revenue Service or charged to the full-time salesperson in accordance with the provisions of Revenue Procedures 2001-56 times the sales tax rate.

## CONCLUSION

The previous instructions are intended to be all-inclusive. However, the Department recognizes and acknowledges that events unanticipated by this Directive might arise, and in such case the Tax Policy Division of the Department should be contacted for guidance.



John Eckart  
Commissioner