



Automobile Dealers Association of Indiana, Inc.

BULLETIN

Bulletin #1403 – July 30, 2014

SALES TAX ON GASOLINE PURCHASES FOR NEW VEHICLE DELIVERY

Replacement to ADAI Bulletin 1207-August 27, 2012

On August 27th, 2012 the attached ADAI bulletin was sent to dealer members as a “Sales Tax Alert” regarding sales tax paid on dealership fuel purchases. At the time we informed you that the Indiana Department of Revenue had said they were going to draft a new revenue bulletin and procedure to be followed for claiming a deduction for such exempt fuel purchases on a monthly basis. At that point in time there was a temporary procedure agreed to: deducting such purchases on Line 2 labeled “Exemptions/Deductions.” As a result of the temporary procedure agreement, we had requested the Department issue final guidelines for claiming those purchases. Almost two years later the Department responded. They did not respond with a procedural bulletin but rather a position that says that only dealers should pay the tax and then file a claim for a refund on Form GA-110L which could be found on the Department’s website under /30504.htm. From a practical standpoint, this means that dealerships now must do one of two things, neither of which may be economically feasible:

File a claim for refund monthly; or

Aggregate claims for a year and then file Form GA-110L annually.

We believe that this position is taken by the Department because in the course of audits the Department became aware of certain manufacturers that in fact reimburse dealers some money for a full delivery program. One such manufacturer is Ford. For example, Ford establishes an average price per gallon of fuel and then reimburses a qualifying dealer that amount. That amount is lower than the market price of gas, perhaps by 20-30%. The Department has taken the position that if the dealer receives reimbursement, then it is not eligible to claim a credit for the per gallon price that was reimbursed. They argue that the dealer would in fact receive excess compensation in that instance. What the Department appears willing to do if the documentation is in order as requested on GA-110L is to allow the dealership to exempt from tax and receive a refund for that portion of the unreimbursed cost of the fuel. That would amount to prorating the tax.

Each dealer should perform a sample calculation to see what this might be worth in the way of a refund. For example, assuming a \$10,000 fuel purchase for a keep full program and a \$7,000 reimbursement, only the tax attributable for \$3,000 worth of fuel would be exempted and subject to refund. If your manufacturer does not reimburse you for the keep full program, then it may still be worthwhile to claim the refund. In order to claim the refund you will have to submit evidence of all your fuel purchases, evidence that the manufacturer requires you to deliver the vehicle with a full tank of fuel and evidence that there is no manufacturer reimbursement for same. In our judgment, claims for compensation under dealer prep time does not have any impact on the fuel program. Don’t let an auditor tell you it does. We are aware that some field auditors have taken that position. That is not the position of the Department at this time.

For further information contact our retained counsel, Ron Smith or Joel Nagle at (317) 684-5000 with the firm of Bose McKinney & Evans LLP.

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BULLETIN

Bulletin #1207 – August 27, 2012

SALES TAX ALERT

Our retained law firm, Stewart & Irwin, has assisted several dealers throughout the state in processing claims for refund with the Indiana Department of Revenue for sales tax paid on fuel used in instances where the manufacturer requires that a new vehicle be delivered to the consumer with a full tank of fuel. The Indiana Department of Revenue is now engaged in the drafting of a Revenue Bulletin outlining the procedure to be followed for claiming the deduction for such purchases on a monthly basis. This deduction is not allowable in situations where the manufacturer does not mandate that the vehicle be filled with fuel for delivery nor does it apply where the dealer fills the tank of a used vehicle as a courtesy to the customer.

GOING FORWARD: Stewart & Irwin has spoken about the appropriate way to claim credit for the payment of taxes on dealership fuel purchases with the head of the Legal Section of the Indiana Department of Revenue. The Department's Procedures Section is drafting an appropriate release setting forth the policy to be followed. On an interim basis until further notice, we have reached agreement with Revenue Department on the following procedure: Line 2 of the Monthly Sales Tax reporting form, now filed electronically, is labeled "Exemptions/Deductions". The price paid for fuel for new car delivery should be separately tracked by the dealership and taken as a deduction from gross sales. **NOTE:** This does not apply to fuel purchases if you deliver used cars with a full tank of gas. It is only to be used in instances where the manufacturers require that a new vehicle be delivered with a full tank of gas.

Again, this procedure should be utilized by you going forward. You should keep a separate detailed monthly journal of these purchases so that you have them available in the event of an audit. Also for past months' sales taxes paid after the refund period, you may cumulatively deduct those purchases on a monthly return as deductions. Again, keep a detailed journal of these purchases by month so that you can justify them if the Department makes an inquiry or in the event of an audit. Once you are caught up, follow this procedure monthly.

For any further questions, please contact either Marty Murphy at the ADAI or Ron Smith or Donn Wray at Stewart & Irwin, 317-639-5454.