

INFORMATION BULLETIN #28L

SALES TAX

JULY 2007

(Replaces Information Bulletin #28 dated January, 2005)

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

SUBJECT: Leases of Motor Vehicles & Trailers

REFERENCES: IC 6-2.5-1-5, IC 6-2.5-1-6, IC 6-2.5-2-2, IC 2.5-3-6, IC 6-2.5-3-7, IC 6-2.5-4-10, IC 6-2.5-13-1, IC 6-2.5-5-38.2

INTRODUCTION

The lease of any motor vehicle or trailer shall be subject to the sales/use tax unless such transaction is entitled to a statutory exemption. The auto dealer acts as an agent for the lessor (leasing company or financial institution) in order to prepare and execute a lease arrangement between the lessee (customer) and the lessor. The lessor is responsible for the collection, reporting and remittance of the Indiana sales/use tax on a lease and must register with the Indiana Department of Revenue.

I. RESIDENT VERSUS NONRESIDENT LEASES

Taxability of a lease is NOT based upon residency of the lessee (customer). The determination is based upon the vehicle's or trailer's state of primary property location, per terms of the lease agreement.

A lease is subject to Indiana sales tax if the vehicle is to be primarily located within Indiana. A lease where the vehicle is to be primarily located in another state will be subject to that state's sales/use tax and will not be subject to the Indiana sales tax. The lessor shall collect and remit the appropriate sales tax to the appropriate taxing jurisdiction.

The state sales tax on a **lease** of any motor vehicle or trailer must be in accordance with I.C. 6-2.5-13-1, General Sourcing Rules. The term “**sourcing**” refers to rules used to determine which state's sales tax is applicable to a transaction. I.C. 6-2.5-13-1 treats taxation of **lease** income differently than income derived from **sales** of motor vehicles. A lease originating in Indiana is subject to Indiana sales tax if the “primary property location” of the vehicle or trailer is indicated on the lease as being located in Indiana. The determination of which state's tax is to be collected on a lease is different for a periodic lease versus a lease that does not require periodic payments (see below).

A. Leases With Periodic Payments – Per I.C. 6-2.5-13-1(f)(1)

For a lease or rental that requires recurring periodic payments (monthly payments), all lease payments (down payments, manufacturer's rebates, equity in trade-in resulting in a capital cost reduction, and each periodic lease payment) are to be sourced to the **primary property location** of the motor vehicle or trailer. The primary property location shall be as indicated by an address for the property provided by the lessee (user) that is available to the lessor (owner) from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This address shall not be altered by intermittent use at different locations. A nonresident may enter into a lease contract where the lease is originated at the Indiana dealership but the motor vehicle's primary location (where the vehicle is to be registered/licensed) is another state. Sales/use tax on the lease will be due to the state of primary property location.

In most periodic leases, the sales tax will be due to the state shown on the lease contract as the state where the motor vehicle or trailer will be licensed for highway use. This is commonly the home state address of the lessee.

B. Leases Without Periodic Payments – Per I.C. 6-2.5-13-1(f)(2)

For a lease or rental that does not require recurring periodic payments (one lumpsum payment), the payment is sourced the same as a retail sale (see IB#28S). Thus, a lease which requires the entire lease to be paid in one lump sum

payment (generally at the time of lease inception) shall be treated the same as a retail sale and the entire amount received upon the lease shall be subject to the Indiana sales tax. Indiana sales tax will be due on the entire lease if the lessee takes physical possession and control of the leased vehicle within Indiana, regardless of state of residence of the lessee or location where the vehicle will be primarily located, registered or licensed.

II. DEALER/LESSOR RESPONSIBILITIES (leases sourced to Indiana)

Customers (lessees) should understand that when a vehicle is leased there are two separate, but related, transactions. The dealer “sells” the vehicle to a leasing or finance company and at the same time originates a lease arrangement between the lessor (leasing/finance company) and the lessee (customer).

If a vehicle or trailer lease is negotiated through a registered Indiana dealer, the dealer, acting as an agent for the lessor, must collect Indiana sales tax on all capital cost reduction payments made upon lease origination. Taxable capital cost reduction payments includes such items as initial cash down payments, manufacturer’s rebates, equity in non-owner trades (trade value allowed even though trade-in is not titled in new lessee’s name) and first month’s lease payments. The lease document shall indicate the taxability of all initial lease origination payments on which the Indiana sales tax is assessed upon lease origination. The lessor will report all lease incomes subject to the Indiana sales/use tax on forms prescribed by the department and shall make timely remittance of all sales/use taxes collected as a lessor. In addition to sales tax collected upon lease origination payments, the lessor shall collect Indiana sales tax on all remaining periodic lease payments as they become due and payable. The lessor must be registered with the Department of Revenue as a Registered Retail Merchant.

If the lessee (customer) claims an exemption and tax is not collected by the lessor, the statement at the bottom of Form ST-108E must be completed indicating the reason exemption is claimed and must be signed by the lessee. When a lessee claims an exemption on Form ST-108E, the lessor must retain a completed exemption certificate in the lessor’s records to document the exempted lease.

Title applications on the sale by a registered dealer to the lessor without a Form ST-108E, completed by the dealer/lessor, will not be accepted by the Bureau of Motor Vehicles. Exemption number 5 must be indicated as the reason for exemption.

III. TAXABLE LEASE AMOUNTS

A **manufacturer's rebate** based upon the lease of a vehicle is not deductible for Indiana sales tax purposes. For Indiana sales tax purposes, a rebate paid to the lessor is deemed to be "gross retail income" and thus is not deductible from the amount subject to Indiana sales tax. **Sales tax is based upon retail income received by the lessor, not amounts paid by the lessee.** It does not matter if the lessee has the option of receiving the rebate in cash, or assigning the rebate to the dealer/lessor to be applied as a capital cost reduction on the lease of a vehicle. The character of the rebate remains taxable. In either situation the total amount of gross retail income received by the lessor is identical. Indiana Code 6-2.5-1-5 defines gross retail income for sales tax purposes to include the total gross receipts, of any kind or nature, received in a retail transaction by a retail merchant.

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

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

All types of discounts, regardless of the terminology used to describe the price adjustment, are either taxable or exempt based upon whether the lessor receives "gross retail income" for the sale or lease of a vehicle.

The equity from a like-kind exchange is deductible from the taxable gross retail income for Indiana sales tax purposes. To be an exempt trade, the vehicle traded-in must be owned and titled in the name of the customer. The equity is deductible from the taxable gross retail income for sales tax purposes. Equity is defined as the gross trade-in value less any encumbrance (lien) on the trade.

IV. TAXABLE LEASE EXAMPLES

**Below examples assumes vehicle primary property location is Indiana.
(T=Taxable; E=Exempt)**

**A. New Vehicle Lease –
Customer Trade is a Vehicle and is Titled in Customer’s Name**

1. Value of owned vehicle trade	\$15,000
2. Customer’s Loan Balance	(10,000)
3. Equity in owned vehicle	\$ 5,000 E
4. Cash paid by customer	\$ 8,000 T
5. Total Payment applied	\$13,000
6. First month lease payment	\$ 400 T
7. Amount Subject to Sales Tax at Lease Origination	\$ 8,400

In the above example the lessor receives a total gross retail income of \$13,400. Only \$8,400 is subject to sales tax. The net equity of the owner trade-in (number 3) is used to reduce the capitalized cost (selling price) of the leased vehicle and is not subject to tax. Indiana statute exempts trade equity applied as a capital cost reduction payment if the vehicle being traded is “titled” to the customer initiating the lease. The cash payment (number 4) and the first month’s lease payment (number 6) collected by the dealer are subject to the Indiana sales tax. The dealer collects the tax as an agent for the lessor. The lessor reports and remits the tax to the Department of Revenue.

**B. New Vehicle Lease –
Customer Trade is a Boat**

1. Value of owned boat trade	\$15,000
2. Customer’s Loan Balance	(10,000)
3. Equity in owned boat	\$ 5,000 T
4. Cash paid by customer	\$ 8,000 T
5. Total Payment applied	\$13,000
6. First month lease payment	\$ 400 T
7. Amount Subject to Sales Tax at Lease Origination	\$ 13,400

In the above example the dealer receives a total gross retail income of \$13,400. The entire \$13,400 is subject to sales tax. The net equity of the boat trade-in (number 3) is not a “like-kind” trade (vehicle for a vehicle), thus is not an exempt trade per Indiana Code. The cash payment (number 4) and the first month’s lease payment (number 6) collected by the dealer are subject to the Indiana sales tax. The dealer collects the tax as an agent for the lessor. The lessor reports and remits the tax to the Department of Revenue.

**C. New Vehicle Lease
Customer Trade is Titled in Customer’s Name and has a Manufacturer’s Rebate.**

1. Value of owned vehicle trade	\$15,000
2. Customer's Loan Balance	(10,000)
3. Equity in owned vehicle	\$ 5,000 E
4. Cash paid by customer	\$ 1,500 T
5. Manufacturer Rebate	\$ 2,000 T
6. Total Payment applied	\$ 8,500
7. First month lease payment	\$ 400 T
8. Amount Subject to Sales Tax at Lease Origination	\$ 3,900

In this example the lessor receives \$8,900 (numbers 3, 4, 5 and 7) for the lease of this vehicle. The net equity of the owner trade-in (number 3) is exempt from sales tax provided the vehicle being traded is titled in the customer's name and is applied as a capital cost reduction. Items, numbered 4, 5 and 7 are taxable.

**D. New Vehicle Lease –
Customer Trades in Vehicle NOT Owned/Titled in Name of Customer at
End of Lease Term**

1. Value of lessee vehicle	\$ 12,000
2. Lessee's optional buy out	(10,000)
3. Allowance for lessee auto	\$ 2,000 T
4. Cash paid by customer	\$ 3,000 T
5. Manufacturer's Rebate	\$ 2,000 T
6. Total Payment applied	\$ 7,000
7. First month lease payment	\$ 400 T
8. Amount Subject to Sales Tax at Lease Origination	\$ 7,400

Dealer exercised option to purchase leased vehicle direct from leasing company. Trade-in was titled to leasing company, not the customer, thus is not an exempt trade per Indiana statute. In the above example, the lessor receives as retail income a total of \$7,400. The entire amount of retail income is subject to the Indiana sales tax. (numbers 3, 4, 5 and 7)

**E. New Vehicle Lease
Customer Receives Manufacturer's Rebate, Manufacturer's Price
Reduction and a Dealer Price Discount.**

1. Manufacturer's Rebate	\$ 3,500 T
2. Manufacturer's Cost Reduction (not paid to dealer)	\$ 2,000 E
3. Dealer Price Discount	\$ 2,000 E
4. Cash paid by customer	\$ 3,000 T
5. First month lease payment	\$ 400 T
6. Amount Subject to Sales Tax at Lease Origination	\$ 6,900

Numbers 2 and 3 are both exempt from sales tax since the lessor does not receive any “gross retail income.” Numbers 1, 4 and 5 are subject to the Indiana sales tax. The amounts are not deductible from taxable gross retail income.

**F. New Vehicle Lease (Non-recurring periodic payment lease)
Entire Lease is Prepaid by Lessee at Origination**

1. Manufacturer’s Rebate	\$ 2,000 T
2. Dealer Price Discount	\$ 1,000 E
3. 3 Year Lease Prepaid by lessee	\$10,500 T
4. Amount Subject to Sales Tax at Lease Origination	\$12,500

The entire lease proceeds numbers 1 and 3, paid at lease origination to the dealer, are subject to the Indiana sales tax regardless of residency of the customer or the primary location of the vehicle. The fact that the lessee may later register/plate the vehicle in another state does not change the fact that Indiana sales tax is due on this transaction. This type of lease is treated the same as a “sale” (see treatment of leases that do not have a recurring periodic lease treatment discussed in Section I, B).

V. NON-INDIANA LEASES

A. The primary property location of a vehicle, per the lease agreement, is used to determine which state’s sales/use tax applies to a lease requiring periodic lease payments. **Residency of the lessee** (customer) is not to be used to determine if the lease is subject to Indiana sales tax versus another state’s sales/use tax. If the motor vehicle or trailer is primarily located within Indiana, the entire lease shall be subject to Indiana sales tax on all “gross retail income” received by an Indiana lessor at the time of lease origination, regardless of residency of the customer. The lessor (leasing or finance company) will collect the appropriate state’s sales tax on the lease based upon where the vehicle is to be physically located, which is normally the state where the vehicle or trailer is registered for highway use. If the primary property location is in another state no Indiana sales tax will be due.

Example: A customer initiates a new lease from an Indiana dealer. The lessee (customer) intends to register/plate the leased vehicle in their home state, which is not Indiana. The Indiana dealer, acting as an agent for the lessor, is responsible for collection of the applicable state’s sales tax. All sales tax in this example is to be collected by the lessor for the state where the vehicle is

primarily located, per the lessor's records.

The dealer, acting as an agent for the lessor, must collect the applicable state's sales tax. The dealer shall indicate on the lease agreement the name of the state for which the tax is collected. If the lessee claims an exemption the exemption must meet the exemption statutes of the state where the vehicle will be located. The dealer, acting as a leasing agent for the lessor, must follow instructions from the lessor as to applicable tax rates and exemption requirements of a state other than Indiana.

B. OTHER STATE'S SALES TAX EXEMPTIONS

Indiana sales tax is not to be collected on leases of vehicles requiring periodic lease payments where the principle property location is in another state. Thus, the dealer must follow instructions from the lessor, for which they are acting as an agent, as to how to calculate and collect the sales tax for other states. The lessor must utilize the available exemptions from the primary property location state.

VI. LESSEE PURCHASE AT END OF LEASE

If a lessee exercises a purchase option at the end of their lease, all monies paid by the lessee to the lessor upon termination of the lease, including excess mileage fees, are subject to sales tax. If the vehicle is located in Indiana at the time the purchase option is exercised the vehicle will be subject to Indiana sales tax. Sales tax is collected in the same manner as a retail sale. The lessor shall collect the sales tax due on the purchase applicable to the state where the vehicle or trailer is physically transferred from the lessor to the buyer, per the records of the lessor at the time the purchase option is exercised.

Additional information pertaining to sales tax concerning vehicles and trailers is found on the Department's website at www.in.gov/dor/business/dealer.html.

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

Information Bulletin #28L
Page #9

John Eckart
Commissioner