

TAX POLICY DIRECTIVE #8

SEPTEMBER 2009

(Replaces Tax Policy Directive #8 dated November 2008)

- 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 These directives can be relied on by taxpayers until superseded by another policy directive, a change in statute or regulation, or a court decision that would render the policy directive void.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
- EFFECTIVE:** September 1, 2009
- 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 8,500 pounds and motorcycles that are made primarily for use on public streets, roads, or highways. "Automobile" or "vehicle" does not include recreational vehicles. This 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 a rate calculated as the Internal Revenue Service's optional business standard mileage rate times the Indiana sales tax rate. The vehicle dealer is required to pay the tax annually. Dealers are required to keep records of each vehicle, the miles driven, and when use tax was paid for the miles driven.
3. In lieu of accounting for the miles driven, the dealer may elect to report the use tax on 2 percent of the dealer's cost of purchasing the vehicle for each month (or fraction of a month) that the vehicle is used as a demonstrator multiplied by the Indiana sales tax rate.
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; works at least 1,000 hours per year; and derives 25 percent of his/her gross income from sales activities. Vehicles used by full-time salespersons for "qualified automobile demonstration use" are not subject to sales and use tax. "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 measured by 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.

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

John Eckart
Commissioner