

125.0000 AUTOMOBILE DEALERS AND SALESMEN—Regulation 1566

125.0020 “Dealer Aid.” A customer looks at new models on the dealer’s floor, accompanied by his salesman. Customer decides not to purchase a new car but salesman suggests the purchase of his demonstrator. After inspecting the demonstrator outside the showroom, customer purchases it from the salesman. Under these facts, assuming the demonstrator was not displayed in the showroom, the dealer is not liable for the sales tax. Mere contact with salesman in the showroom does not, in this instance constitute “dealer aid.”

The same is true if, after looking at new cars on the dealer’s floor, customer meets salesman at lunch and demonstrator is offered and accepted. 8/30/55.

125.0032 Manufacturer’s Rebate vs. Dealer’s Incentive Or Allowance. The manufacturer’s rebate is an inducement to the consumer to purchase and is a credit available to be taken as cash or to be applied against the selling price of the vehicle. The consumer may assign the credit to the dealer. Under section 6012, the measure of the sales tax includes any amount for which credit is allowed by the dealer. The dealer collects the amount of the rebate from the manufacturer pursuant to the assignment made to the dealer by the consumer. The consumer rebate may be identified as an additional down payment or may be subtracted directly from the cash price of the vehicle. In both cases, the amount of the rebate is fully subject to tax.

As distinguished from a consumer’s rebate, the manufacturer may make incentives or allowances directly to the dealers. These are inducements to the dealer to sell and are payable in the form of discounts on the cost of the vehicle to the dealer. The allowance may be a year-end close-out allowance based on unsold units. The assistance may take the form of incentive price assistance to enable the dealer to bid against competitors. The manufacturer may offer government price concessions or fleet incentives. In all of these cases the incentive or allowance is an inducement to the dealer and results in a reduction of the cost of the vehicle to the dealer. That is, there is a price adjustment between the manufacturer and a dealer as to the wholesale price of the vehicle. The actual amount of factory incentives or allowances or holdbacks may not be disclosed to consumers. In some cases, such incentives or allowances may be passed on dollar-for-dollar to the consumer and may be disclosed to the consumer whether there is intentional disclosure or not. The incentive results in a reduction in the taxable retail selling price of the vehicle, and the measure of sales tax is thus reduced. 2/24/89.

125.0050 Sales of a Vehicle with Foreign Delivery. Under a foreign auto manufacturer’s Tourist Order Sales Program, the dealers act within the terms of the Tourist Order Limited Agency Appointment agreement. Accordingly, the dealers will be considered agents of the manufacturer. The manufacturer, engaged in business in this state, will be held responsible for the collection of use tax on tourist order sales.

Conversely, where the dealer acts as a principal in the transaction, as evidenced by documentation that indicate the dealer is acting as the seller as opposed to an agent of the manufacturer, such dealer will be considered the retailer liable for the collection of use tax. 7/10/96. (Am. 2000–1).

[125.0070](#) **Transfers of Autos to Employees, Etc.** Transfers of autos or property by corporations to employees as a bonus, even if an annual custom and therefore expected by the employee, is a gift unless consideration such as cash or assumption of liabilities is given by the employee or there is a specific contract provision under which the employee is entitled to such property. A copy of the corporate minutes or a written statement from a responsible corporate official ratifying the gift will suffice as proof. We cannot insist on a ruling from the Internal Revenue Service or the Franchise Tax Board that they accept the transfer as a gift, nor does the inclusion of the transfer as income on a W-2, 1099, or 599 has relevance in deciding if such a transfer is a sale.

Transfers to shareholders of closely held corporations are not sales if the parties follow the “dividend in kind” procedure (see Annotation 495.0725) with both entities showing the transfer as a dividend on its books, unless the corporation receives consideration for the transfer such as cash or the assumption of indebtedness by the transferee.

Transfers to others not directly related to the corporation (e.g., daughter of sole shareholder) cannot be assumed to be sales without payment of traditional consideration such as cash or an assumption of liabilities by the transferee.
4/28/87. 3144

[125.0080](#) **Used Vehicles Withdrawn from Inventory for Personal Use.** When licensed dealers acquire vehicles as trade-ins from nondealers and make any use of the vehicles other than demonstration and display while holding them for sale, they must pay the use tax directly to the Board. 5/12/66.

AUTOMOBILES

See Vehicles; Vehicles, Vessels, and Aircraft.