

## **140.0000 BARTER, EXCHANGE, “TRADE-INS”—Regulation 1654**

*See also Gross Receipts.*

140.0003 **Barter, Exchange, etc.—Tangible for Intangible.** A TV manufacturer provides a new TV set to a television network for use as a prize on a game show “. . . in exchange for an identification.” The agreement between the parties specifies that if conditions prevent the network from giving the contracted identification, they will pay for the TV set “. . . at dealers’ cost.” This establishes the gross receipts from the exchange of the TV set, which is a taxable sale by the manufacturer in spite of the fact that the consideration normally received is intangible air time.

In the absence of wording in the agreement implying or specifying the value of the property or air time being exchanged, the suggested retail price of the property contained in the agreement would be the measure of tax. 8/22/78.

140.0004 **Barter or Trade for Silver Coins.** A gasoline retailer advertised the sale of gasoline for one silver U.S. dime. He also offered to sell gasoline for the posted prevailing price which is in excess of \$1.00 a gallon without mentioning any particular form of payment. The silver dimes, although legal tender, are not being traded at minted face value but rather at their precious metal or numismatic value. Considering the difficulty of placing a daily value on a fluctuating commodity, it may be assumed that the value of a silver dime is equal to the amount of the posted price of the gasoline acquired in exchange for it. 2/14/80.

140.0005 **Equipment Exchange.** A firm manufactures and sells fault tolerant large mainframe computer systems and fairly large minicomputer systems. The firm also helps its customers relocate their data centers. The firm is considering offering an option whereby the firm would place its reconditioned equipment at the new location. Once the system at the new location is functional and the application programs have been transferred, the customer’s equipment at the old location would be removed and returned to the manufacturer. The equipment swapped would be unit-for-unit, of equivalent condition.

The transaction would result in the manufacturer making a retail sale of equipment to the customer with the manufacturer taking the customer’s equipment as a trade-in. The gross receipts of the sale include the fair market value of the equipment traded in and any other consideration paid by the customer for the swap. Charges for labor for services used in installing the equipment sold would be excluded from the measure of tax. 2/18/93.

**140.0007 Exchange Value.** Internal Revenue Code section 1031 provides that no gain or loss shall be recognized on the exchange of property held for productive use in trade or business or for investment if such property is exchanged solely for property of like kind which is to be held for productive use in a trade or business or for investment. An exchange of property transferred pursuant to Internal Revenue Code section 1031 is a sale pursuant to Sales and Use Tax Law section 6006(a), and the measure of tax is the realistic exchange value as negotiated by the parties in an arms length transaction. 12/16/91.

**140.0010 Gross Receipts for Exchange Transactions.** In the case of an exchange, gross receipts includes the value of the property received and all direct costs, such as freight, inspection fees, import fees, broker fees, taxes, etc. or any other fees, associated with the property received in the exchange. 6/22/78.

**140.0020 Overallowances.** Although a discount is not a part of taxable gross receipts, an amount designated as an “overallowance” on merchandise traded in may not be excluded upon the ground that it is a discount. 11/27/51.

**140.0026 Rebate from Manufacturer—Trade-In.** A retailer purchases a product from a distributor for \$29,000 for resale and sells it to a customer for \$28,000 less a cash discount of \$2,800 for a net sale price of \$25,200. The retailer charges sales tax to customer based upon the net sales price of \$25,200. The customer’s old product, which is taken by the retailer upon the sale of the new product to the customer, is sent to the manufacturer for a rebate of \$5,000 to the retailer.

In this transaction, the customer has contracted to pay a certain sum of money plus transfer the old product as consideration for acquiring the new product. Taxable gross receipts from this sale includes the fair market value of the old product, which is \$5,000. That amount must be included in the retailer’s taxable gross receipts. Thus, the correct measure of tax is \$30,200; \$25,200 cash price plus \$5,000 trade-in. 9/20/94.

**140.0028 Replacement Not Treated as Trade-In Merchandise.** A retailer of motion picture films informed his customers through its price lists that an old or damaged print could be replaced with a new print of the same subject at a 20% replacement discount provided the old or damaged print was returned to the retailer for destruction. When a customer took advantage of this offer, the retailer’s billing to the customers showed the list price of the print, the replacement discount, and a net price upon which tax reimbursement was computed. The old or damaged print returned, being of no value to the retailer, was destroyed and discarded. The transaction under the above circumstance did not involve merchandise traded-in

as set forth in Regulation 1654(b)(1) and, therefore, the replacement discounts are not includable in gross receipts. 9/28/71.

**140.0040 Trade-Ins.** Where a retailer advertises that he will sell a new tire for a certain price plus an old tire, the trade-in allowance of the old tire must be established and included in taxable gross receipts. Even if the retailer contends that the trade-in allowance is greater than the value of the item traded in, the trade-in allowance is the amount included in gross receipts for purposes of measuring sales tax.

The trade-in allowance is the difference between the amount charged customers leaving their worn tire and the amount charged other customers, at a similar time, who do not exchange an old tire. For example: Usual price without exchange is \$16.00. Advertised sale price where old tire is traded in is \$14.00. The taxable trade-in allowance of the old tire is \$2.00. 9/11/53; 2/6/91.

**140.0050 Trade-In of Software.** A retailer offers a promotional discount/tradein whereby the customer was forced to give up his current software in order to obtain the company's so-called promotional discount. An agreed value between buyer and seller was reached as to the value of the traded in software.

When a retailer accepts a trade-in, the retailer must include in the measure of tax the amount agreed upon between the retailer and the buyer as the allowance for the merchandise traded in. If there is a trade-in and also a discount, the contract between the seller and the buyer must make it clear that the parties contract for both a trade-in allowance and for a discount. 12/14/92.

**140.0080 Trade-In Value.** Where the parties have not fixed a trade-in value on worn property and where the worn property has no scrap value and is junked at the time of trade-in, the worn property has no market value to be added to the selling price of the item upon which it was traded-in. 1/26/68.

**140.0100 Trade-Ins—Underallowance.** When a used automobile is traded in on the purchase price of a new automobile, the dealer accepting the trade-in must include in the measure of tax the amount agreed upon between the seller and the buyer as the allowance for the merchandise traded in. However, if the allowance stated in the agreement is less than the fair market value, the stated value will not be accepted if there is sufficient evidence to establish that the under allowance on a trade-in was not the result of a bona fide transaction between the seller and the buyer, that is, the dealer deliberately lowered the trade-in value of an automobile to reduce the measure of tax. A dealer's intent to evade paying the proper amount of tax due may be evidenced by, among other things, recorded trade-in allowances that are consistently below market value and which are not attributed to trade in automobiles that are in less than fair condition; gross profit margins that are

consistently lower on transactions involving trade-ins than on transactions without trade-ins and which are not attributed to business practices pursued by the industry, such as trades on loss-leader automobiles, or trades during promotional sales; and a widespread pattern of underallowances occurring consistently throughout the audit period. If an underallowance is an isolated transaction, the Board would examine whether the difference in the trade-in value and the fair market value listed in the Kelley Blue Book is attributable to the condition of the particular automobile. Where an underallowance is not a bona fide transaction, the Board would tax the underallowance as additional gross receipts and consider whether a 25 percent intent to evade penalty should be imposed. 6/26/96.

**140.0500 Underallowance on Trade-Ins—Automobiles.** When a used automobile is traded in on the purchase price of a new automobile, the dealer accepting the trade-in must include in the measure of tax the amount agreed upon between the seller and the buyer as the allowance for the automobile traded in. (Regulation 1654(b)(1).) If an underallowance on a trade-in is the result of a bonafide transaction between the seller and the buyer, additional tax should not be computed on the underallowance for the same reason that the Board does not redetermine the fair market value of a trade-in when the agreed upon price is above the price listed in the Kelly Blue Book. Instead, the agreed upon trade-in value is included in the measure of tax from the sale of the automobile.

Regulation 1654(b)(1) also provides that should the Board find that the allowance stated in the agreement is less than the fair market value, it shall be presumed that the allowance actually agreed upon is such market value. However, if there is sufficient evidence to establish that the dealer deliberately underallowed the trade-in value to reduce the measure of tax, the underallowance is additional gross receipts. If this is the case, an intent to evade penalty would also be imposed. In summary, the underallowance is part of gross receipts when a transaction is structured to evade tax and not simply because the dealer has negotiated a favorable contract. 12/21/95.