

## STATE OF MICHIGAN



JOHN ENGLER, Governor

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DOUGLAS B. ROBERTS, State Treasurer

**SALES TAX REFUND PROCEDURES FOR MOTOR VEHICLE  
DEALERS AND OTHERS WHO PAY SALES TAX TO  
THE SECRETARY OF STATE AND FOR MOTOR VEHICLE  
MANUFACTURERS UNDER THE "LEMON LAW"**

**(Replaces Revenue Administrative Bulletin 1991-5)**

**RAB-95-9.** This bulletin revisits the discussion in Revenue Administrative Bulletin (RAB) 1991-5 pertaining to the background of the motor vehicle sales tax refund, including past application of the law. It sets forth the sales tax refund procedure that motor vehicle dealers and others who pay sales tax to the Secretary of State must follow. This procedure applies to situations where: the customer returns the motor vehicle, mobile home, or water craft for a full purchase price refund; the sales transaction was improperly subjected to tax; the tax on the transaction was improperly calculated; and other situations in which refund of the sales tax is proper.

This bulletin updates RAB 1991-5 by including a discussion of Public Act 127 of 1994. This act amends the General Sales Tax Act to allow a full sales tax refund when a less-than-full purchase price refund is made for the return of a motor vehicle under the provisions of the "lemon law" [MCL 257.1401 et seq.; MSA 9.2705(1) et seq.]. This bulletin describes the new procedure for a sales tax refund associated with such manufacturer buy-back agreements which became effective August 1, 1994. Dealer buy backs are not covered by the provisions of the "lemon law".

**Background and the Law**

In the past, the Department of Treasury refunded sales tax paid on motor vehicles, mobile homes, and watercraft returned to dealers for full refund or credit. The Department also issued refunds when the seller improperly computed or charged sales tax. Some dealers refunded the sales tax to the customer before requesting the refund, and others refunded the tax to the customer after receiving the refund.

The Department also issued sales tax refunds under manufacturer buy-back agreements mandated by the "lemon law." Prior to May 1, 1991, these sales tax refunds were issued even when the manufacturer did not issue a full exchange, refund, or credit to the customer.

The policy described in the above paragraph was in direct conflict with Michigan Department of Treasury Sales and Use Tax Rule, 1979 AC, R 205.16, Returned Goods, which provides:

Credits or refunds for returned goods, the sales of which have been subject to tax, may be deducted only if the goods are voluntarily returned for full exchange, an entire refund of purchase price, or full credit. When the property is returned within a reasonable time after the date of sale, and the purchase is made whole, a credit may be had on the tax paid on the rescinded sale.

The rule clearly states that a sale is rescinded and qualifies for sales tax refund only if the goods are voluntarily returned by the customer for full exchange, refund, or credit.

However, an exchange or refund associated with a manufacturer's buy-back under the "lemon law" was not considered a rescinded sale when an allowance for use was deducted. A manufacturer buy-back was a rescinded sale and qualified for a sales tax refund only if a full and complete exchange, refund, or credit of the original purchase price was given to the original purchaser. Therefore RAB 1991-5 revoked the previous sales tax refund procedure for manufacturer buy-backs under the "lemon law" outlined in Letter Ruling 89-22 because it was not limited to rescinded sales as defined above.

Public Act 127 of 1994, effective August 1, 1994, amended the definition of "gross proceeds" in the General Sales Tax Act as follows :

. . . A credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under Act No. 87 of the Public Acts of 1986, being sections 257.1401 to 257.1410 of the Michigan Compiled Laws, as certified by the manufacturer on a form provided by the department of treasury, may be deducted. (Amendment underscored) [MCL 205.51(h); MSA 7.521(h)]

### **Application of the Law**

With this amendment, the definition of a rescinded sale that qualifies for a sales tax refund now includes the return of a motor vehicle under the provisions mandated by the "lemon law." These provisions allow the seller to reduce the refund by the amount attributed to the consumer's use or damage not attributable to normal use or to the defect or condition. The consumer's use is calculated at 10 cents per mile or 10 percent of the purchase price of the vehicle, whichever is less. The seller must get an appraisal for damage not related to normal use or to the actual "lemon law" defect.

A refund to the consumer that deducts the consumer's use, appraised damage beyond normal use, or mileage is not a rescinded sale unless the provisions of the "lemon law" are followed and certified by the manufacturer (see procedure below). Any other partial refund or credit, or an exchange for less than the original purchase price, is not a rescission; therefore, sales tax paid on the original price will not be refunded.

The trade-in of a vehicle on another purchase, that is not a lemon law buy back, is not a rescinded sale unless the consumer returns the vehicle to the original dealer and the credit is equal to the full price of the original purchase.

The statute of limitations for claiming a refund is four years from the original payment date [MCL 205.59(3); MSA 7.5301(3)]. Any tax paid prior to that time shall not be refunded.

### **General Sales Tax Refund Procedure**

To obtain timely refunds of the sales tax, dealers and manufacturers should claim a credit on their next filing of the Sales and Use Tax Worksheet. This worksheet can be found in the General and Line-by-Line Instructions for Sales Tax, Use Tax, Income Tax Withholding, and Single Business Tax Estimates booklet, form C-3091.

The dealer or manufacturer must deduct the amount of the rescinded sale or improperly taxed sale on line "Other. Identify: \_\_\_\_\_" under ALLOWABLE DEDUCTIONS, in the Sales Tax column of the return worksheet. When deducting only a portion of the tax paid (because the tax was improperly calculated), multiply the amount of tax incorrectly charged by 16.667 to arrive at the amount to be entered in the Sales Tax column on line "Other. Identify: \_\_\_\_\_." (Multiply by 25, if the transaction was prior to May 1, 1994 and the applicable tax rate was four percent.) Do not include sales tax in the amount on this line unless it is also included on line "Tax included in gross sales" under ALLOWABLE DEDUCTIONS.

The amount entered in the Sales Tax column on line "Other. Identify: \_\_\_\_\_" will reduce line "Taxable balance" on the worksheet by the amount of the deductions. This will reduce line "Gross tax due" in the Sales Tax column of the worksheet. This reduction may result in a negative sales tax liability. A negative sales tax liability should be used to reduce any "Gross tax due" in the Use Tax column(s), or any withholding due from line "Michigan income tax withheld" in the Withholding Tax section of the worksheet. Enter the net amount of tax due on the return.

If a negative sales tax liability remains, do not enter a credit figure on the return itself as this may cause an assessment. If the credit is more than the tax due for the period, file a return indicating no tax due and carry the credit forward on the worksheet until the credit is depleted.

A dealer who claims a sales tax refund under this procedure must retain all documentation regarding the credit for audit purposes, including proof that a full exchange, refund, or credit was given to the purchaser.

### **Sales Tax Refund Procedure for Manufacturer Buy-Back Agreements Under the "Lemon Law"**

Manufacturers who file Michigan sales, use and withholding tax returns should refund to the consumer, and follow the general refund procedures described in this bulletin. Public Act 127 of 1994 requires that the manufacturer retain the following documentation for "lemon law" refunds including an allowable deduction for use:

1. An affidavit in the form of the sample appearing at the end of this bulletin; and
2. A copy of the consumer's written notification of the defect or condition to the manufacturer as required by the lemon law, MCL 257.251; MSA 9.1951.

For transactions involving an out-of-state manufacturer who does not file Michigan sales, use, and withholding tax returns either the consumer or the manufacturer may request a refund of Michigan tax paid on the returned vehicle. To request a refund, the manufacturer or consumer must submit all of the following documents :

1. Copy of title application (forms RD-108 or TR-11C) of original purchaser showing validations as proof of Michigan tax paid.
2. Copy of the manufacturer's buy-back agreement or arbitration decision stating the buy-back dollar figure given to the original purchaser.
3. Consumer's social security number, if the refund will be issued directly to the consumer.

The above items shall be submitted to:

Michigan Department of Treasury;  
Sales, Use, and Withholding Taxes Division;  
Lansing, MI 48922

Note: A dealer is not a principal in "lemon law" buybacks. Therefore, dealers should not refund to consumers nor claim credits for "lemon law" buybacks on their sales, use, and withholding tax returns.

The manufacturer must retain an affidavit similar to the one on the following page to document each "lemon law" refund.

AFFIDAVIT TO BE COMPLETED WHEN CREDIT IS GRANTED OR REFUNDED FOR A  
RETURNED MOTOR VEHICLE UNDER ACT 87 OF THE PUBLIC ACTS OF 1986

The undersigned hereby certifies that they have accepted return of the following new motor vehicle,

\_\_\_\_\_, \_\_\_\_\_ from \_\_\_\_\_,  
Year, Make & Model                      V.I.N. Number                      Consumer's Name

and has replaced the motor vehicle or issued a refund on \_\_\_\_\_ to the above named consumer  
Date

in accordance with the provisions of Public Act 87 of 1986.

Full Original Purchase Price \_\_\_\_\_

Less: Allowance for Consumer's Use \_\_\_\_\_

Less: Appraised Damage Not Attributable to  
Normal Use or to the Defect or Condition \_\_\_\_\_

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\_\_\_\_\_  
Manufacturer

\_\_\_\_\_  
Authorized Representative, Title

\_\_\_\_\_  
Date