



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

NICK A. KHOURI  
STATE TREASURER

November 21, 2018

[REDACTED]

Re: Technical Advice Letter  
Use tax on loaners during vehicle repairs under recall or warranty

Dear [REDACTED]:

Thank you for your letter dated July 12, 2018. You requested a technical advice letter on behalf of [REDACTED] ([REDACTED]) regarding the applicability of use tax to rental vehicles (loaners) during a warranty or recall repair of an owner’s vehicle at a dealership.

Your request meets the requirements for a technical advice letter under Revenue Administrative Bulletin 2016-20.

**Facts.** [REDACTED] primary business is the temporary vehicle rental business. The company operates under three brands, [REDACTED], [REDACTED], and [REDACTED]. Their customers consist primarily of individuals or businesses looking for temporary lease arrangements on a specified car for a specific period of time. The company timely makes the “lessor election” and remits use tax on all rental receipts for each of its vehicles.

[REDACTED] also contracts with car dealerships throughout Michigan to provide a temporary vehicle to a dealership customer if the customer’s vehicle is brought in for service under warranty or recall from the manufacturer. The dealership pays [REDACTED] for the cost of the temporary rental vehicle (loaner) used by the customer and use tax is collected and remitted to the State. The dealership customer signs an agreement with [REDACTED] acknowledging that the dealership is paying for the loaner, but if the dealership refuses to pay, the customer is financially responsible for the rental cost and taxes.

In your letter, you provide examples of three common scenarios, which are summarized below.

*Temporary vehicle rental (loaner).* John Doe purchased a vehicle from a dealership and paid sales tax at the time of purchase. A mandatory warranty was included in the vehicle purchase price. Sales tax was paid on the purchase price. Sometime later, a recall or warranty repair requires John Doe to take the vehicle into the dealership for service. Since the repair will take several days, the dealership, under a contract with [REDACTED],

will arrange for an [REDACTED] loaner at no cost to John Doe while his vehicle is being repaired. When the repair is done, John Doe will turn in the loaner to [REDACTED] and the transaction is complete. [REDACTED] bills the dealership a flat rate, inclusive of tax. If the daily rental rate is \$38.00 and the customer had the vehicle for 3 days, the total fee to the dealership would be \$114.00 and [REDACTED] would remit use tax on the rental receipt.

*Recall repair.* The manufacturer makes the recall determination and sends out notices to dealership customers requesting that they schedule service at a dealership. When a vehicle is repaired under a recall from the manufacturer, the dealership is reimbursed by the manufacturer for the cost of the loaner along with other expenses related to the recall repair.

*Warranty repair.* The vehicle owner makes the decision to have warranty repair performed, not the dealership or manufacturer. When a vehicle is repaired under a warranty, the dealership may be reimbursed for a loaner by the manufacturer, but only if the repair requires a loaner and the dealership must follow strict procedures required by the manufacturer covering everything from paperwork to quality of the repair.

## Issues

1. When recall repairs require the dealership to provide the customer a “loaner,” does the third-party lessor owe use tax on the rental receipts if the loaner cost was part of the manufacturer’s consideration included in the purchase price of the customer’s vehicle?
2. When warranty repairs require the dealership to provide the customer a “loaner,” does the third-party lessor owe use tax on the rental receipts if the loaner cost was part of the manufacturer’s consideration included in the purchase price of the customer’s vehicle?

## Discussion

Generally, the sale of a vehicle by a dealership to a purchaser is subject to sales tax. The Michigan General Sales Tax Act provides in pertinent part:

[T]here is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business....<sup>1</sup>

While sales tax is owed on most sales to dealership customers, the dealership is not obligated to pay sales tax if the purchaser claims exemption where the lessor in the business of leasing vehicles and the purchaser elects to pay use tax on its stream of lease receipts. The Use Tax Act provides in pertinent part:

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<sup>1</sup> MCL 205.52(1)

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A lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired....<sup>2</sup>

In your case, when a customer purchases or leases a vehicle from a dealership, there is also a required warranty sold as part of the vehicle's purchase price to cover any damages or issues related to the vehicle for a specified period of time.

If warranty or recall repairs are performed by the dealership at no cost to the customer who purchased the vehicle, there is no sales tax charged on the repair. The Michigan Department of Treasury issued Letter Ruling 1989-61 regarding manufacturers' warranties. The ruling states:

The Department does not impose sales tax on parts or labor furnished by a manufacturer under a warranty program.... Where a new car dealer provides a part under a manufacturer's warranty, there is no consideration to constitute a sale at retail. Therefore, the transaction is not taxable.

██████████ requires payment from the dealership or from the customer if the dealership fails to pay. The consideration paid by the dealership, or the customer to ██████████ constitutes a sale at retail and is subject to use tax.

██████████ a not a party to the manufacturer's warranty. Unlike a free replacement part supplied by the manufacturer under a recall or warranty, the transaction between ██████████ and the dealership (or the customer) is a separate transaction in which ██████████ receives consideration for its rental vehicle. ██████████ receives consideration apart from the consideration paid by the customer to the dealership. Therefore, the components of the purchase price of the customer's vehicle are not relevant to the determination of use tax in these examples.

Please contact me if you have any further questions regarding this matter.

Sincerely,

Lance R. Wilkinson, Administrator  
Tax Policy Division

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<sup>2</sup> MCL 205.95(4)