

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 12-08**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Whether fees paid by a potential purchaser for transferring a motor vehicle from one of the retailer's business locations to another of the retailer's business locations is subject to Tennessee's sales and use tax.

**SCOPE**

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

**FACTS**

The Taxpayer is a motor vehicle retailer that maintains business locations in multiple states, including Tennessee. Customers may purchase motor vehicles from the Taxpayer directly at the Taxpayer's business locations. On many occasions, a vehicle meeting the customer's requirements is not available at the Taxpayer's store in the customer's immediate vicinity. Most customers are unwilling to purchase a motor vehicle sight unseen and without taking a test drive.

When a customer is interested in viewing and testing a motor vehicle that is not located at the Taxpayer's nearest store, the Taxpayer will offer the customer the option of having that motor vehicle shipped to one of the Taxpayer's business locations near the customer's home. This transfer is done under the terms of a specific and separate transfer agreement (the "Transfer Contract") between the Taxpayer and the customer. The Taxpayer charges its customers a fee (the "Transfer Fee") for this service.

The transfer/shipping process for a vehicle under the circumstances described above involves the following six steps:

**1. A Customer Contacts the Taxpayer:**

A customer will make contact with a Taxpayer's store located near the customer's residence. In larger markets, the Taxpayer may have more than one store located within easy driving distance of the customer's home. The customer may call the Taxpayer's sales consultant or submit a Vehicle Transfer Form from a Vehicle Fact Sheet. If the customer chooses to submit a Vehicle Transfer Form online, a sales consultant will contact the customer to answer any questions that the customer may have about the vehicle and to make sure that the vehicle will meet the customer's specific needs.

2. Pre-Transfer Inspection:

The sales consultant will inspect the automobile sought by the customer and provide answers to the customer's questions at no charge to the customer.

3. Confirmation:

The sales consultant will then contact the customer to answer any additional questions. If the vehicle is not at the customer's delivery location, the sales consultant will confirm the customer's order to have the vehicle transferred.

4. Vehicle Transfer Contract and Transfer Fee:

In order to have a vehicle transferred to a location near the customer's residence, the customer is required to enter into a contract (the "Transfer Contract") with the Taxpayer providing for the transfer of the vehicle for a stated Transfer Fee. The transfer is requested by the customer and the Transfer Fee is paid prior to any commitment to purchase the vehicle. The Transfer Fee paid is based on distance that the vehicle is transferred. The Transfer Fee is not based on the sale price of the vehicle transferred and the transfer transaction is treated as a separate from the sale of the vehicle.

If the customer chooses to purchase a transferred vehicle, the ultimate sales price of the vehicle is consistent with the sales price at the vehicle's original location. The Transfer Fee neither increases nor decreases the ultimate sales price of the vehicle. The Transfer Fee is separately invoiced to the customer and is treated as a separate transaction from the sale of the vehicle.

5. Payment of the Transfer Fee:

If the customer executes a Transfer Contract, the customer is required to:

- a. Bring a check for the full amount of the Transfer Fee to the Taxpayer's store location where the vehicle will be transferred; or
- b. Pay the Transfer Fee by telephone using a credit card.

6. Reservation and Transfer:

Once the Taxpayer receives the Transfer Fee, the sales consultant verifies that the vehicle has been reserved and it is scheduled for transfer.

The Transfer Contract pertains only to the shipping of a vehicle to another location. No other services are provided in exchange for the Transfer Fee. For example, execution of the Transfer Contract does not entitle the customer to inspect the vehicle on location, to obtain a vehicle fact sheet or to obtain any other service. The Transfer Contract is not dependent upon the ultimate sale of the vehicle or any other agreement. Frequently a vehicle that has been transferred is not purchased by the customer who executed a Transfer Contract and paid the Transfer Fee. In such situations, the Transfer Fee is not refunded to the customer and the vehicle is sold at a later time to a different customer.

If the customer purchases the transferred vehicle, the purchase is executed under a separate purchase and sale contract that neither refers to the Transfer Contract nor incorporates the Transfer Contract by reference. Under no circumstances does the existence of a Transfer Contract or payment of a Transfer Fee impact the sales price of the motor vehicle. If a customer pays a Transfer Fee to view and inspect a vehicle, the Transfer Fee is not deducted from the vehicle's sales price or considered to be a part of the vehicle's sales price.

### **QUESTION PRESENTED**

Under the circumstances described in the Facts presented, are Transfer Fees paid pursuant to a Transfer Contract subject to Tennessee sales and use tax?

### **RULING**

No.

### **ANALYSIS**

The Tennessee sales and use tax is levied on the privilege of engaging in the business of selling tangible personal property at retail in Tennessee or using or consuming tangible personal property in this state. Tenn. Code Ann. §§ 67-6-201, 67-6-202 and 67-6-203. In addition, the tax is levied on the privilege of engaging in the business of leasing or renting tangible personal property in Tennessee. Tenn. Code Ann. § 67-6-205. The tax is also levied on the sales price of certain taxable services in Tennessee. Tenn. Code Ann. § 67-6-205.

Freight, delivery or other transportation charges are considered part of the sales price of tangible personal property that is subject to the Tennessee sales and use tax. Tenn. Code Ann. § 67-6-102(81)(A)(iv) and Tenn. Comp. R. & Reg. 1320-5-1-.71. This is true regardless of whether the freight, delivery or other transportation charges are included in the sales price of the tangible personal property sold, separately itemized on the invoice for the sale, or billed separately from the tangible personal property to which the charges pertain.

However, in the Facts presented the tangible personal property, which consists of a motor vehicle, is merely being moved/shipped from one of the Taxpayer's business locations to another of the Taxpayer's business locations at the request of a potential buyer. This is being done to facilitate inspection by the potential buyer. The vehicle is not being delivered to a purchaser and is not being transferred as a result of its sale. The person paying the Transfer Fee does not obtain title or possession of the vehicle as a result of the vehicle's transfer from one of the Taxpayer's locations to another of the Taxpayer's locations.

Execution of the Transfer Contract does not entitle the customer to inspect the vehicle on location, to obtain a vehicle fact sheet or to obtain any other service. The Transfer Contract is not dependent upon the ultimate sale of the vehicle or any other agreement. If the vehicle transferred is ultimately sold, the sale contract neither refers to the Transfer Contract nor incorporates the Transfer Contract by reference.

The Transfer Fee charged is based on the distance that the vehicle is moved rather than the sales price of the vehicle and is non-refundable regardless of whether the person requesting the vehicle's transfer purchases the vehicle. If the person who has requested transfer of the vehicle does purchase the vehicle, the purchase price is negotiated without regard to the Transfer Fee that has been paid. In such a case, the Transfer Fee has no impact on the price for which the

vehicle is ultimately sold and does not operate to increase or decrease the amount that the purchaser pays for the vehicle.

Clearly, the Transfer Fee is not paid pursuant to the sale, use, lease or rental of tangible personal property. The Transfer Fee charged by the Taxpayer and paid by the person requesting the vehicle's transfer is for the service of moving/shipping a specific motor vehicle from one of the Taxpayer's business locations to another of the Taxpayer's business locations. This service is not one of the services specifically enumerated in Tenn. Code Ann. § 67-6-205 as being subject to Tennessee sales and use tax.

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**APPROVED:** Richard H. Roberts, Commissioner

**DATE:** June 25, 2012