

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 13-11**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

Application of the Tennessee sales and use tax to factory-to-dealer incentive payments made to an automotive dealership.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] (the "Taxpayer") receives incentive payments under the following programs, which comprise part of the New Vehicle Purchase Program offered by [AUTO MANUFACTURER]: [INCENTIVE PROGRAMS]. [AUTO MANUFACTURER] is a motor vehicle manufacturer.

The Incentive Programs apply to sales of new and unused [AUTO MANUFACTURER] vehicles to certain eligible purchasers. Depending on the particular program, eligible purchasers may

include current or retired [AUTO MANUFACTURER] employees, surviving spouses of retired employees, [AUTO MANUFACTURER] dealer operators and their employees, and other [AUTO MANUFACTURER]-affiliated parties.

The amount of the incentive is set on a per-model basis. In turn, dealers are required to use the incentive to reduce the purchase price of the vehicle by the amount of the incentive received. In order to receive a price reduction under one of the Incentive Programs, eligible purchasers must obtain an authorization number from [AUTO MANUFACTURER] and present this number to the Taxpayer. Utilizing the authorization number, the Taxpayer obtains an approval code from [AUTO MANUFACTURER] and may then sell the vehicle to the eligible purchaser at a reduced price. After the Taxpayer notifies [AUTO MANUFACTURER] of the sale and submits any additional necessary data, [AUTO MANUFACTURER] remits an incentive payment (the “Incentive Payment”) to the Taxpayer to reimburse the Taxpayer for the price reduction afforded to the eligible purchaser.

RULING

For Tennessee sales and use tax purposes, is the Incentive Payment excluded from the sales price of a vehicle sold to a purchaser participating in one or more of the Incentive Programs described above?

Ruling: For Tennessee sales and use tax purposes, the Incentive Payment is included in the sales price of a vehicle sold to a purchaser participating in one or more of the Incentive Programs, but under TENN. CODE ANN. § 67-6-341(a) (2011), an immediate credit is given for the portion of the sales tax attributable to the Incentive Payment. As a result, the amount of sales tax due on the sale of the vehicle is as if the Incentive Payment had not been included in the sales price of the vehicle.

ANALYSIS

TENN. CODE ANN. § 67-6-202(a) (Supp. 2012) imposes the Tennessee sales tax on the sales price of each article of tangible personal property sold at retail in Tennessee. TENN. CODE ANN. § 67-6-102(79)(A) (Supp. 2012) defines the term “sales price” in pertinent part as the “total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise,” with no deduction for the seller’s costs or charges for services necessary to complete the sale, among other things.

Generally, the sales price of an item will include consideration received by the seller from a third party when: 1) the seller actually receives consideration from a party other than the purchaser; 2) the consideration is directly related to a price reduction or discount on the sale; 3) the seller has an obligation to pass the price reduction or discount through to the purchaser; 4) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser.¹ In addition, TENN. CODE ANN. § 67-6-102(79)(C)(iv) sets

¹ See TENN. CODE ANN. § 67-6-102(79)(C).

forth three criteria, one of which must also be met in order for consideration received by a seller from a third party to be included in the sales price of an item:

- (a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or other documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
- (b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or
- (c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser.

Incentive payments of the type received by the Taxpayer are generally included in the sales price of the item because: 1) the Taxpayer actually receives consideration from [AUTO MANUFACTURER], a third party; 2) the consideration is directly related to a price reduction or discount on the sale; 3) the Taxpayer has an obligation to pass the price reduction or discount through to the purchaser; 4) the amount of the consideration attributable to the sale is fixed and determinable by the Taxpayer at the time of the sale of the item to the purchaser; and 5) the purchaser identifies himself to the Taxpayer as a member of a group entitled to a price reduction or discount in accordance with TENN. CODE ANN. § 67-6-102(79)(C)(iv)(b).

Notwithstanding the inclusion of such incentive payments in the sales price of an item, the General Assembly has created an immediate credit applicable when a motor vehicle manufacturer's incentive payments are involved.

Specifically, TENN. CODE ANN. § 67-6-341(a) (2011) provides that a "credit shall be granted in the manner provided in [TENN. CODE ANN. § 67-6-341(b)] for the amount of the sales tax due on motor vehicle manufacturer's incentive payments included in the sales price of motor vehicles sold at retail." TENN. CODE ANN. § 67-6-341(b) provides that the "credit shall apply such that sales tax is owed on the sales price of the motor vehicle less any otherwise taxable motor vehicle manufacturer's incentive payment associated with the sale."²

TENN. CODE ANN. § 67-6-341(c)(1) defines the term "motor vehicle manufacturer's incentive payment" as "the amount due to the retailer pursuant to a motor vehicle manufacturer's incentive purchase program." TENN. CODE ANN. § 67-6-341(c)(2) defines "motor vehicle manufacturer's incentive purchase program" as "a program sponsored by a motor vehicle manufacturer pursuant to which an amount, whether paid in money, credit, or otherwise, is received by a retailer from a motor vehicle manufacturer based upon the unit price of motor vehicles sold at retail that

² As a practical matter, the amount of the credit may be calculated by multiplying the amount of the incentive payment by the state sales tax rate.

requires the retailer to reduce the sales price of the product to the purchaser without the use of a manufacturer's coupon or redemption certificate.”

Thus, the TENN. CODE ANN. § 67-6-341 credit is available if the Incentive Payment is properly considered a motor vehicle manufacturer's incentive payment, as defined under TENN. CODE ANN. § 67-6-341(c)(2). To qualify as a motor vehicle manufacturer's incentive payment, the Incentive Payment must be an amount due to the Taxpayer under a motor vehicle manufacturer's incentive purchase program.

For an Incentive Program to be considered a motor vehicle manufacturer's incentive purchase program, the following requirements must be met: 1) the Incentive Program must be a program sponsored by a motor vehicle manufacturer; 2) the Taxpayer must receive an amount, whether paid in money, credit, or otherwise, from the motor vehicle manufacturer pursuant to the Incentive Program; 3) the amount received must be based upon the unit price of motor vehicles sold at retail; and 4) the Incentive Program must require the Taxpayer to reduce the sales price of the product to the purchaser without the use of a manufacturer's coupon or redemption certificate.

Here, the Incentive Program is properly considered a motor vehicle manufacturer's incentive purchase program.

First, the Incentive Program is sponsored by [AUTO MANUFACTURER], a motor vehicle manufacturer. Second, the Taxpayer receives an amount, paid in money, credit, or otherwise, from [AUTO MANUFACTURER] pursuant to the Incentive Program. Third, the amount received is based upon the unit price of the motor vehicle sold at retail.

Fourth, the Incentive Program requires the Taxpayer to reduce the sales price of the product to the purchaser without the use of a manufacturer's coupon or redemption certificate. The Retailers' Sales Tax Act does not define the terms “manufacturer's coupon” or “redemption certificate.” When a word or phrase is not defined in a statute, the Tennessee Supreme Court “look[s] to its usual and accepted meaning from sources of common usage.”³ Fortunately, other states have defined such terms by regulation in a manner that reflects common usage and understanding. For example, Massachusetts defines a “manufacturer's coupon” for sales tax purposes as “a coupon issued by the manufacturer, supplier or distributor of tangible personal property to be redeemed by a retail purchaser of that property.”⁴ “Redemption certificate” is defined in Kentucky's sales tax regulations as “a certificate in writing vesting in a customer upon the purchase of certain tangible personal property the right to a reduction in the sales price of the property.”⁵

The Taxpayer has indicated that, in order to receive a price reduction under one of the Incentive Programs, eligible purchasers must obtain an authorization number from [AUTO MANUFACTURER] and present this number to the Taxpayer. Utilizing the authorization

³ *Bryant v. Genco Stamping & Mfg. Co.*, 33 S.W.3d 761, 765 (Tenn. 2000).

⁴ 830 MASS. CODE REGS. 64H.1.4 (West, Westlaw through July 19, 2013).

⁵ 103 KY. ADMIN. REGS. 31:080 (West, Westlaw through July 1, 2013).

number, the Taxpayer obtains an approval code from [AUTO MANUFACTURER]. This authorization number is different from a manufacturer's coupon or redemption certificate. The primary distinction is that the authorization number is simply used to verify eligibility for a specific group of individuals, whereas a coupon or certificate generally functions to entitle the bearer to a discount. In other words, coupons or certificates bestow entitlement to a discount, whereas participants in the Incentive Programs are already entitled to a discount by the nature of their relationship to [AUTO MANUFACTURER], and simply need to verify their status to the Taxpayer. The authorization number is simply a more efficient method of verifying employee and family eligibility than requiring the dealership to contact [AUTO MANUFACTURER]'s human resources department and inquire based on the customer's name.

This interpretation is also in line with the purpose underlying TENN. CODE ANN. § 67-6-341, which was enacted to allow a motor vehicle dealer to pass along the benefit of a factory-to-dealer incentive payment without the inclusion of the payment in the sales tax due on the motor vehicle. Such factory-to-dealer incentive payments reduce the dealers' wholesale cost of the vehicle, incentivizing the dealer to participate in the program due to the way the program maintains consistent profit margins for the dealership selling to [AUTO MANUFACTURER] employees and family vis-à-vis regular customers, and the payments incentivize employees and family to purchase from the dealer due to the discount.

Having met all applicable requirements, the Incentive Programs are properly considered a motor vehicle manufacturer's incentive purchase program.⁶ Accordingly, the Incentive Payment qualifies for the TENN. CODE ANN. § 67-6-341(a) immediate sales tax credit.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 8/27/13

⁶ Note that this ruling applies to the facts presented herein, and takes no position on the application of TENN. CODE ANN. § 67-6-341 to any discounts that are properly included in the sales price of an item by the operation of TENN. CODE ANN. § 67-6-102(79)(C)(iv)(a), (c).