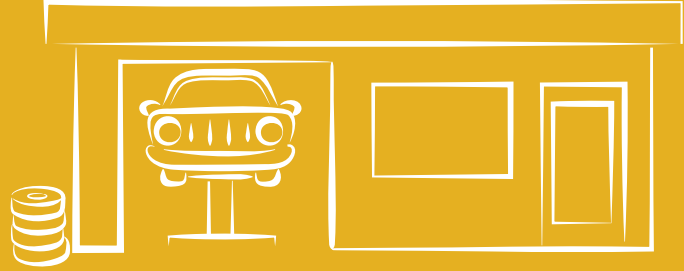


Sales Tax Information for Vehicle & Watercraft Dealers and Body & Repair Shops



This publication is provided for general guidance only. It does not contain all sales or use tax laws or rules.

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Contents

| | |
|---|---|
| Introduction..... | 1 |
| Definitions..... | 1 |
| Paying Sales Tax..... | 1 |
| Determining Tax Base..... | 1 |
| Towing Charges..... | 2 |
| Sales to Employees..... | 2 |
| Demonstrator Vehicles..... | 2 |
| Paint, Parts and Other Purchases for Resale..... | 2 |
| Consumable Shop Supplies..... | 2 |
| Cost of Parts..... | 2 |
| Lease Transactions..... | 2 |
| Courtesy Delivery..... | 3 |
| In-state Dealer Transactions..... | 3 |
| Out-of-Utah Dealer/Manufacturer's Transactions..... | 3 |
| Remote Sales..... | 3 |
| Exemptions..... | 3 |
| Farmers..... | 3 |
| Interstate Sales..... | 3 |
| Authorized Carriers..... | 3 |
| Auxiliary Equipment..... | 3 |
| Trailer Dollies..... | 3 |
| Multiple Trailers..... | 3 |
| Nonresident Military Personnel Stationed in Utah..... | 3 |
| Nonresident Students Attending Utah Schools..... | 4 |
| Resale/Re-lease..... | 4 |
| Trade-in Exemption..... | 4 |
| Donations to Exempt Entities..... | 4 |
| Foreign Diplomat Vehicles..... | 4 |
| Exclusive Use Outside Utah..... | 4 |
| Requirements for the Exemption to Apply..... | 4 |
| Qualifying/Non-qualifying Items – Marine..... | 4 |
| Credit Allowed for Other States' Tax..... | 5 |
| Reciprocity..... | 5 |
| Out-of-Utah Deliveries..... | 5 |
| Repossession Credits..... | 5 |
| Refund of Sales Tax on Repurchase of a Motor Vehicle..... | 5 |
| Purchases by Native Americans..... | 6 |
| Out of State Purchases..... | 6 |
| Purchases in Utah..... | 6 |
| Leases..... | 6 |
| Vehicle Transfers to or from Trusts..... | 6 |
| Washing of Vehicles in Dealer Inventory..... | 6 |

Introduction

This publication provides tax information relating to dealers of vehicles and watercraft and to body and repair shops. See Publication 25 for general sales and use tax information.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references.

Tax laws may change due to legislative action. Changes to law will supersede information in this publication.

Definitions

Vehicle dealer is defined in Utah Code §59-12-102 as any "person engaged in the business of buying, selling, or exchanging a vehicle." The term includes lessors of vehicles who sell previously leased vehicles at termination of such leases. Vehicles include highway vehicles, off-highway vehicles, trailers, semi-trailers, watercraft, aircraft, and similar items.

Paying Sales Tax

Sales tax due on vehicle sales by Utah vehicle dealers must be paid with a dealer's sales and use tax return, on or before the established due date.

On vehicles sold by dealers, neither dealers nor their customers may pay sales tax to the Division of Motor Vehicles (DMV) at the time of registration. Even in the case of customers registering vehicles purchased from vehicle dealers (including body/repair shops) licensed for sales tax purposes in Utah, the sales tax must be collected by the dealer and paid to the Tax Commission with the dealer's sales and use tax returns. Purchasers of vehicles from other than licensed vehicle dealers must pay applicable sales tax to the DMV.

Determining Tax Base

The following items are taxable:

- charges for dealer preparation, commissions and similar fees;
- charges to customers for waste disposal, hazardous material handling or disposal, etc. (unless the tax is required by Utah or federal law and is a tax on the customer);

- charges for shop supplies (Note: Tax must also be paid on purchases of items used or consumed by the repair shop even though the consumer is charged separately.)
- charges for vehicle theft protection packages if they include window etchings, glass engravings, security devices, or other modifications or additions to the vehicle;
- sales of extended warranties even though the sale of the vehicle may have qualified for exemption under the authorized carrier exemption;
- sales of extended warranties or service plans (tax must be charged at the time the warranty agreement is sold);
- towing charges (if in connection with a taxable service);
- amounts collected as deductibles at time of service; and
- document service fees.

Note: Sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes and mobile homes, while subject to sales and use tax, are exempt from the resort communities tax and the state correctional facility tax. However, sales of off-highway vehicles, snowmobiles and trailers are not exempt.

Note: If a Utah resident purchases a vehicle outside of Utah, they may take a sales and use tax credit for tax paid to the other state for the purchase of that vehicle. A resident is someone who has established domicile in Utah for a total period of six months or more during any calendar year. A motor vehicle owner must register their vehicle in Utah within 60 days of establishing residency.

The following items are nontaxable:

- amounts of manufacturer's rebates, whether paid to the purchaser or retained by the dealer as a down payment;
- costs of labor and parts to honor claims against in-house warranties and service plans, or charges to third-party service companies for nationally honored plans;
- fees to transfer a warranty to a new owner;
- the separate charges for interest, liability waivers or insurance;
- Utah safety inspection fees;
- county emission testing fees;
- separate charges for diagnostic testing services if no repairs are made as a result of the test;
- separately stated fuel, parking or storage fees;
- charges for Guaranteed Auto Protection (GAP) coverage plans that protect the purchaser in the event of certain property losses;
- sales of extended warranties if the sale of the vehicle (including watercraft and off-highway vehicles) qualified for exemption under the exclusive use outside of Utah exemption or out-of-Utah delivery exemption; and
- charges for amounts to be paid to the Utah State Tax Commission for titles, registrations, fee-in-lieu of property tax, and license plates on behalf of customers, including the fee for a temporary permit.

Towing Charges

What is Taxable

Towing charges in connection with the sale or repair of tangible personal property are taxable. For example, a towing company responds to a caller who requests that the towing company tow his car to their repair shop and fix his flat tire. The charges for towing services and repair are taxable, even if separately stated on an invoice.

What is Exempt

Towing charges, without any sales or repair, are not taxable. For example, a towing company responds to a caller who requests that her car be towed to a local garage for repair. Because the towing company only performed a service and did not repair any tangible personal property or make any sales, the transaction is not subject to tax.

Sales to Employees

Sales to employees are subject to sales tax.

Demonstrator Vehicles

Owners and licensed sales staff can be assigned a demonstrator vehicle without being assessed sales or use tax. Rental charges for demos are subject to tax. Rental charges include charge backs, whether or not formally designated as a rental. For more information, see Tax Commission Rule R865-19S-82.

Paint, Parts and Other Purchases for Resale

Businesses repairing and servicing vehicles are not required to pay tax on their purchases of items that are sold and become an ingredient or component part of the customer's vehicle. Some examples of nontaxable purchases include: lubricants; welding rods; paint, wax and lacquers used in painting or polishing vehicles; body filler; repair parts; sublet repair labor; paint hardener and rust preventatives.

Consumable Shop Supplies

Amounts paid by a body/repair/service shop for tangible personal property (other than machinery, equipment, parts, office supplies, electricity, gas, heat, steam or other fuels) that are completely consumed in the performance of a taxable service are not subject to tax.

Cost of Parts

Cost of parts need not be considered for tax when used to repair a vehicle recently sold under an implied warranty and/or to keep the customer's good will.

Lease Transactions

1. Amounts received or charged for a lease or rental of tangible personal property are subject to tax.
2. Up-front payments are taxable to the extent they are part of the purchase or lease price. The portion of up-front payments attributed to nontaxable charges, such as pay-offs of previously existing obligations, license/registration/titling fees, etc., are exempt.
3. Lessors are responsible for the tax on payments they receive or credit against the lease and are also responsible for collecting tax on the sale of vehicles at lease termination.
4. Dealers are responsible for tax on payments they receive that are not forwarded to the lessor.
5. A lease that includes a payoff of a previously existing obligation or refinancing by a lease transaction in which title is vested in the lessor constitutes a taxable lease. This is true unless the transaction fits the criteria excluding sale-leaseback transactions from the definition of retail sales in Utah Code §59-12-102.
6. A customer who trades in a leased vehicle must first purchase the vehicle and pay any sales or use tax ap-

plicable to that purchase before he can receive a trade-in credit.

7. The trade-in credit for an owned vehicle is allowed against the typical lease situation if the trade equity reduces the periodic lease payments to the lessor.

Courtesy Delivery

In-state Dealer Transactions

The dealer making the sale must charge, collect and remit the sales tax at the tax rate applicable to its business location when another in-state dealer makes a courtesy delivery for the seller.

Out-of-Utah Dealer/Manufacturer's Transactions

A Utah dealer is responsible for collecting Utah sales or use tax when making courtesy deliveries for an out-of-Utah dealer or manufacturer if the Utah dealer assists the purchaser in registration and titling. The local dealer should not issue a dealer report of sale, but Utah sales tax must be collected by the dealer and paid directly to the Tax Commission at the time of registration.

Remote Sales

When a dealer who does not have a Utah business location sells a manufactured/mobile/modular home, motor vehicle, aircraft or watercraft, the location of the transaction is where the buyer takes receipt of the property.

Exemptions

Caution: A dealer may be held individually liable for the tax if it is evident the dealer was a party to a plan to improperly avoid the tax.

Farmers

Repair parts and labor for farm tractors and equipment (not including registered vehicles) are exempt from sales and use tax. The seller must have an exemption certificate on file. Implement of Husbandry certificates for off-highway farm machinery are not considered registration. Sales and repairs of registered vehicles are not exempt under the agricultural producer exemption.

Interstate Sales

Sales to consumers are exempt from Utah sales tax when the vehicle, watercraft or merchandise is delivered by a Utah dealer to an out-of-Utah location. Delivery must be made by the dealer or by common carrier. The Affidavit for Exclusive Use Outside of Utah (form TC-721A) does not apply to these transactions. The dealer should attach a note to the temporary permit indicating out-of-Utah delivery along with the fee and mail it to the Tax Commission. The dealer must keep a verification of delivery using form TC-757, Affidavit of Out-of-State Delivery. It is not necessary to send a copy of this form to the Tax Commission.

Authorized Carriers

Sales tax law allows an exemption for sales, leases or uses of:

1. vehicles by an authorized carrier; or
2. tangible personal property installed on a vehicle that is sold or leased by an authorized carrier, provided that

the property is installed before the vehicle is placed in service for the first time.

Authorized carrier is defined as "in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA)."

The exemption applies only to vehicles with a gross vehicle weight of 26,001 pounds or more. This weight restriction is interpreted as meaning the maximum gross laden weight of the vehicle, combination of vehicles, and load carried or drawn, for which the motor vehicle is registered.

In the case of aircraft, authorized carrier means the holder of a Federal Aviation Administration operating certificate or air carrier's operating certificate.

To document this exemption, use form TC-719, Sales Tax Exemption Affidavit for Authorized Interstate Carriers.

Auxiliary Equipment

Auxiliary equipment purchased and permanently installed in or on a vehicle as part of a qualifying vehicle transaction is also exempt. The exemption only applies to sales or leases of vehicles.

Effective July 1, 2007, the sale, use or lease of tangible personal property installed on a vehicle sold to or leased by an authorized carrier is exempt if installed before the vehicle is placed in service for the first time.

For instance, if an authorized carrier enters into a transaction to have a dump body added to a truck, a logo painted on the cab door, or a refrigeration unit installed in a trailer, these transactions qualify for the exemption if attached before the vehicle is placed in service for the first time. This exemption is for authorized carriers only.

Tax Commission form TC-719, Sales Tax Exemption Affidavit for Authorized Interstate Carriers, must be used to verify the exemption.

Trailer Dollies

A trailer dolly (converter gear) is equipment consisting of wheels, at least one axle, and a fifth wheel, that is attached to the king pin of a semi-trailer to convert the semi-trailer to a full trailer. A trailer dolly is required to be licensed and registered as a separate trailer and used in combination with other qualified vehicles and would meet the qualification for exemption when purchased by an authorized carrier and operated pursuant to IRP and IFTA.

Multiple Trailers

Trailers and semi-trailers purchased separately from a power unit, or in numbers in excess of available power units, are allowed the exemption if purchased for use in combination with vehicles meeting the exemption criteria. However, a trailer purchased or leased for use as a temporary office, storage facility or other use not associated with highway transportation is not allowed the exemption.

Nonresident Military Personnel Stationed in Utah

Military personnel stationed in Utah are not exempt from

Utah sales or use tax unless they qualify for the exclusive use outside of Utah exemption as detailed below.

Nonresident Students Attending Utah Schools

A student living and attending school in Utah is not exempt from Utah sales or use tax unless they qualify for the exclusive use outside of Utah exemption as detailed below.

Resale/Re-lease

A completed exemption certificate must be on file to claim this exemption.

Trade-in Exemption

An allowance for a trade-in of tangible personal property on the purchase of a vehicle may be excluded from the amount on which the tax is computed. For the trade-in provisions of the Utah law to apply, the trade-in must be part of a single transaction and the transaction must involve only two parties. A customer who trades in a leased vehicle must first purchase the vehicle and pay any sales or use tax applicable to that purchase before he can receive a trade-in credit.

A single transaction means both the trade-in of the old vehicle and the purchase of the new vehicle take place at the same time and are documented in the same contract, buyer's order and other paperwork. The transaction would involve a fixed specific allowance for the vehicle traded in, a fixed selling price for the new vehicle, a contractual obligation of the seller to both sell the new vehicle and accept the trade-in vehicle, and a contractual obligation of the purchaser to purchase a specific vehicle. The trade-in provisions with regard to the single transaction criteria would not be violated if the new vehicle is ordered from the factory and actual delivery of the new vehicle to the customer is consequently delayed.

The trade-in credit may be allowed if the person trading in a vehicle does not appear as the owner on the title to the trade-in; however, the Tax Commission will follow up on such transactions and assess the customer directly for any taxes due on the acquisition of the vehicle traded in. An owner of a vehicle recently acquired, but not yet titled in the buyer's name, may be required to show all applicable sales or use taxes have been paid on the acquisition of the vehicle if the trade-in credit has been allowed.

Trades of services (e.g., advertising, legal, accounting, etc.), equity in real property, and items taken for sale on consignment are not allowable trades for reduction of the taxable base. A credit given for a trade on a future purchase is not part of the purchase transaction and no reduction for a trade is allowed for sales tax credit.

Do not overstate or duplicate credits on trade-downs or trades on nontaxable sales.

See Tax Commission Rules R865-19S-30 and R865-19S-72.

Donations to Exempt Entities

A dealer who donates a vehicle or other item, or who provides use of such to an organization that would be exempt if a sale had been made, is not required to either collect or pay sales/use tax on the value of the donated property or the use of the property.

Foreign Diplomat Vehicles

Sales and leases of motor vehicles to foreign diplomats are

exempt ONLY IF the dealer receives a Motor Vehicle Tax-Exemption Letter signed by the U. S Department of State, Office of Foreign Missions (OFM) or the American Institute in Taiwan (AIT). Diplomatic Tax Exemption Cards DO NOT exempt vehicle purchases from sales tax.

Exclusive Use Outside Utah

Requirements for the Exemption to Apply

Sales of the following items are exempt from sales tax:

- Vehicles that must be registered under the Motor Vehicle Act
- Watercraft that must be registered under the State Boating Act
- Boat trailers
- Outboard motors
- Off-highway vehicles (snowmobile, all-terrain vehicle or motorcycle)

This exemption only applies if one of the above items is not registered in Utah and is either not used in Utah or is used in Utah for:

- non-business purposes 30 days or less in a calendar year, or
- business purposes for the time needed to transport it to the borders

To claim the exemption you must complete form TC-721A, *Sales and Use Tax Exemption Affidavit for Exclusive Use Outside of Utah*.

See Utah Code §59-12-104.

Qualifying/Non-qualifying Items – Marine

1. Only boats required to be registered under the provisions of the State Boating Act, Utah Code §73-18-7, qualify for the exemption. This would include both motorboats and sailboats as defined by the act. A motorboat is any vessel propelled by machinery, regardless of whether the machinery is the principal source of power. A sailboat is any vessel having one or more sails and propelled by the force of wind. In addition to the boat itself, the exemption will also be allowed for items that are part of the original boat sales transaction and are installed in or on the boat in a permanent manner. Such items, if so installed or attached, would include convertible tops, swim platforms, trim tabs, radios, stereos, speakers, depth finders, spot lights, running lights, antennas, auxiliary batteries, fuel tanks, water tanks, inboard engines, inboard/outdrives, auxiliary outboard mounting brackets, horns, winches, sails, sail halyards and similar installed or integral equipment.
2. A boat trailer, regardless of unladen weight, will qualify for the exemption. Also allowable are the winch, sideboards, spare tires, etc. attached to the trailer and part of the original sales transaction.
3. Any outboard motor, regardless of horsepower, fuel supply or energy source, will qualify. Also included are its remote control and fuel supply tank or battery when sold as part of the original sale of the motor.
4. Boats not required to be registered, such as kayaks, canoes, rowboats or inflatable boats, will not qualify unless specifically designed to be propelled by motor or sail.
5. Equipment that is not part of the original transaction for

sale of the boat, motor and/or trailer, or not installed in a permanent manner to the boat, motor or trailer, will not qualify for exemption. Such equipment includes water skis, fishing equipment, other water sports gear, anchors, fire extinguishers, safety equipment, life jackets, ice chests, tool kits, spare parts, camping gear, bumpers, flotation devices, ropes, paddles, etc. The law specifically indicates outboard motors are included. Inboard/outdrive units sold separately from the sale of a boat will not qualify. Sales of items not qualifying must be taxed.

6. Non-qualifying items must be separately stated and separately priced on the invoice or contract of sale to enable proper handling for sales tax purposes.

Credit Allowed for Other States' Tax

1. Most states allow credit for at least part of the sales or use tax legally due first to another state. Since sales tax is a tax on the transaction and not on the property, the tax is due at the point of sale. If the sale takes place in Utah and an exclusive use outside of Utah affidavit is completed by the purchaser in error or accepted by the dealer in error, no credit will be allowed by Utah for any tax paid to a state other than Utah, since tax was legally due first in Utah.
2. Utah will allow credit for tax properly due and paid first to a state other than Utah.

Reciprocity

1. Utah has reciprocal agreements with Idaho and Wyoming that allow a person having a primary residence in one state but employed in another to use a vehicle registered with the state of principal residence in the other state for purposes of commuting to the work place.
2. The agreements are specifically for registration of vehicles and do not waive any other fees or taxes levied by the respective states.

Out-of-Utah Deliveries

1. The Affidavit for Exclusive Use Outside of Utah, form TC-721A, does not support exemption for out-of-Utah deliveries of motor vehicles.
2. The seller must keep evidence of the out-of-Utah delivery to verify the exemption. Affidavit of Out-of-State Delivery, form TC-757, may be used as evidence of this exemption.
3. Frequent deliveries into another state may subject the seller to the other state's tax collection requirements.
4. The out-of-Utah delivery must be an essential part of the sale, and the seller must be obligated by terms of the sales contract to make physical delivery of the vehicle across a state border to the buyer. The seller must make that physical delivery. See Tax Commission Rule R865-19S-44.
5. If the purchaser brings the vehicle back to Utah for use, the vehicle may be subject to Utah use tax, with credit allowed for tax due and paid first to the other state.

Repossession Credits

Sales tax credit is allowed for repossessions of a motor vehicle provided that the seller collected the sales tax on the vehicle being repossessed and the seller resells the vehicle. Credit for tax on motor vehicle repossessions is allowed to the

seller that collected the sales tax as well as a third-party seller that repossessed and resold the vehicle. For a third-party seller to obtain a sales tax credit from the Tax Commission, the seller that collected the sales tax must be out of business and not have any outstanding sales and use tax liabilities.

Repossession credits are determined by the application of a ratio to the taxable base after a reduction for any down payment. The ratio is the unexpired portion (number of monthly payments not made) of the contract to the total length of the contract.

Example:

The repossession credit is reduced by recoveries, **other than the amount realized through the resale of the repossessed vehicle**, to arrive at the net taxable base (gross amount before attorney or collection agency fees). The net taxable base is then multiplied by the sales tax rate in effect on the date of the original sale to calculate the repossession sales tax credit. If the tax rate has changed since the original sale, divide the repossession sales tax credit by the current tax rate to calculate an adjusted net taxable base.

| | |
|--|--------------|
| a. Total taxable base | \$30,000.00 |
| b. Down payment | (\$5,000.00) |
| c. Balance of taxable base (line a minus line b) | \$25,000.00 |
| d. Number of full months unpaid at time of repossession | 40 |
| e. Total contract period | 60 |
| f. Ratio (line d divided by line e) | 0.6667 |
| g. Credit before recoveries (line c times line f) | \$16,667.50 |
| h. Amount recovered (excludes re-sale proceeds) | (\$3,000.00) |
| i. Net taxable base (line g minus line h) | \$13,667.50 |
| j. Tax rate from original sale | 6.60% |
| k. Repossession credit (line i times line j) | \$902.06 |

Show the net taxable base or the adjusted net taxable base on the proper line of the current sales tax return and attach an explanation.

Make certain of the amount originally taxed (consider rebates, price adjustments, discounts, etc.) and the rate of tax. Special computations are required for contracts calling for balloon payments at the end of the contract.

Refund of Sales Tax on Repurchase of a Motor Vehicle

When repurchasing a motor vehicle from a retail customer, motor vehicle manufacturers should also refund sales tax paid at the time the vehicle was purchased.

A manufacturer may recover sales tax amounts refunded to a retail customer by including that amount on the adjustment line of its Utah sales tax return. All sales tax amounts included on the adjustment line must be accompanied by supporting calculations and the following information:

1. name of the retail customer to whom sales tax amounts were refunded;

2. name of the dealer from whom the retail customer purchased the vehicle;
3. date of the original purchase;
4. date the vehicle was repurchased by the manufacturer; and
5. vehicle identification number of the repurchased vehicle.

Sales tax applies to any charges for the use of a vehicle (see "Determining Tax Base, Taxable Sales").

A manufacturer recovering the sales tax amount refunded to a retail customer must maintain all paperwork for three years documenting the repurchase.

Purchases by Native Americans

Out of State Purchases

1. When a vehicle is purchased out of state by an enrolled tribal member and driven into Utah within a reservation boundary the purchase is not subject to tax.
2. When a vehicle is purchased out of state by an enrolled tribal member and driven into Utah outside the tribal boundary on its way to the reservation the purchase is subject to tax.

Purchases in Utah

1. When a vehicle is purchased in Utah by an enrolled tribal member and the delivery takes place off the reservation the purchase is subject to tax.
2. When a vehicle is purchased in Utah by an enrolled tribal member and the vehicle is delivered by the seller to the reservation the purchase is not subject to tax.

Leases

When a vehicle is leased in Utah off the reservation by an enrolled tribal member but the primary property location is the reservation the lease is not subject to tax.

Vehicle Transfers to or from Trusts

Any transfers between a trust and its beneficiaries, trustees or members would be subject to sales tax, if all of the following conditions are met:

1. The trust has been established as a separate legal entity;
2. There is an actual transfer of ownership of the vehicle; and
3. There is consideration given or received in exchange for the vehicle.

However, transfer of a vehicle to or from a trust where ownership of the vehicle before and after the transfer is substantially the same is considered an isolated transaction and is exempt from sales tax. Transfers to or from a trust may be in the form of a gift and no consideration is involved; therefore, the transfer would not be subject to sales tax. However, if consideration is involved, sales tax would be imposed on the transfer.

Washing of Vehicles in Dealer Inventory

Charges for cleaning, washing or detailing vehicles held in resale inventory are not taxable.

Sales tax publications provide general guidance only. They do not contain all sales or use tax laws or rules. If you need additional information, call 801-297-7705 or 1-800-662-4335, ext. 7705 (outside the Salt Lake area), or email taxmaster@utah.gov.