

280-RICR-20-70-28

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 70 – SALES AND USE TAX

Part 28 – Motor Vehicle and Non-Motorized Vehicle Taxes

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28.1 Purpose

The purpose of this regulations is to implement R.I. Gen. Laws §§ 44-18 and 44-19 which provide for Tax on Motor Vehicles and Non-Motorized Vehicles which are sold, used, or stored in the State of Rhode Island.

28.2 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 44-1-4 and 44-19-33. The rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws § 42-35-1, *et seq.*, of the Rhode Island Administrative Procedures Act.

28.3 Application

These rules and requirements shall be liberally construed so as to permit the Division of Taxation the authority to effectuate the purpose of R.I. Gen. Laws §§ 44-18 and 44-19, as well as other applicable State regulations and statutes.

28.4 Severability

If any provision of these rules and regulations, or the applications thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be impaired or affected thereby.

28.5 Definitions

- A. "Automobile" means, for the purposes of Trade-in deductions and Trade-in Allowances, a private passenger vehicle not used for hire, and does not refer to any other type of motor vehicle.
- B. "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property. The Administrator of the Division of Motor Vehicles shall determine, in case of doubt, if a motor vehicle is subject to registration as a truck.
- C. "Motor Vehicle" means every vehicle intended primarily for use and operation on the public highways which is self-propelled, not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

28.6 Due Date and Measure of the Sales and Use Tax

A. Due Date of the Tax

The tax on the purchase of a motor vehicle, whether purchased from a dealer or on casual sale, must be paid prior to registering the vehicle or by the 20th day of the month following the month during which such purchase was made, whichever date comes first. Although payment of the tax is a prerequisite to registering a motor vehicle, the tax must, however, be paid by said 20th day even though the vehicle is not registered by such 20th day.

B. Title and Documentary Fee

1. For the purpose of this Subpart, title fee and documentary fee shall mean the fee(s) charged by a motor vehicle dealer to recover reasonable costs for processing all documentation and performing of services related to the closing of a sale.
2. A motor vehicle dealer that is licensed by the Division of Motor Vehicles may, in connection with the sale of a motor vehicle, impose fees for:
 - a. The services of registering and titling said vehicle with the Division of Motor Vehicles on behalf of the purchaser; and/or
 - b. The preparation of various paperwork associated with the sale, financing, leasing, insurance, liens, warranties, federal and state disclosures, and other procedures associated with the sale, leasing and financing of vehicles obtained or provided by the dealership.
3. Any motor vehicle dealer that charges a title preparation fee, in accordance with § 28.6(B)(2)(a) of this Part, or the documentary preparation fee, in accordance with § 28.6(B)(2)(b) of this Part, shall separately state the fee(s) on the invoice. The fee(s), where charged, shall be included in the total sales price of the motor vehicle.
4. The title and documentary fee(s) shall be included in the taxable measure regardless of whether the motor vehicle has been sold or leased. If the motor vehicle dealer charges a fee for the preparation of documents which are for the sale and/or registration of a motor vehicle, the fee shall be a part of the taxable measure.
5. A motor vehicle dealer cannot circumvent the inclusion of the above mentioned fees in the taxable measure by characterizing the fees as something other than a title or documentary fee.

28.7 Motor Vehicle Trade-In Allowance

- A. The Rhode Island sales and use tax law provides that the amount of the trade in allowance of a private passenger automobile when given in trade toward the purchase of a new or used private passenger automobile is excluded from the measure of the use tax.
- B. A passenger automobile shall be deemed a motor vehicle carrying passengers other than for hire, if the Division of Motor Vehicles registers the vehicle as a private passenger automobile. Hearses and other automobiles used chiefly in connection with the conduct of funerals are not considered "automobiles for hire" and therefore qualify for the trade-in allowance.
- C. Rhode Island motor vehicle dealers who are required to add and collect a tax on the sale of motor vehicles to nonresidents are allowed to take into consideration the law of the state of the nonresident as it relates to the trade-in of motor vehicles.
- D. A separate or independent sale of an automobile to a third party by the purchaser of a new or used private passenger automobile from a dealer is not a trade-in even if the proceeds from the third party sale are immediately applied by the seller to the purchase of a private passenger automobile from a dealer. A sale shall be deemed a separate or independent sale if one or more of the following events occur:
 - 1. the third party buyer of the automobile pays the seller, and not the dealer, for the automobile;
 - 2. the dealer does not take physical possession of the automobile; or
 - 3. title does not pass to the dealer.
- E. Notwithstanding § 28.8(D) of this Part, when a taxpayer "trades-in" a private passenger automobile that is used as a capital cost reduction on the lease of a private passenger automobile, the amount of the reduction attributable to said trade-in is not subject to the tax.
- F. Any dealer or salesman who willfully misstates information on a document that is required for the proper computation of the use tax on a motor vehicle is subject to the penalty provisions set forth in R.I. Gen Laws §§ 44-18 and 44-19, *et seq.*, of the sales and use tax law.

28.9 Payment of Tax as Prerequisite to Registration

- A. Each person before obtaining an original or transfer registration for any article or commodity in this state, which article or commodity is required to be licensed or registered in the state, shall furnish evidence satisfactory to the Tax Administrator that any tax due has been paid. The sales or use tax on any motor vehicle and/or recreational vehicle requiring registration by the Registry of Motor Vehicles shall not be added by the retailer to the sale price or charge but shall be paid directly by the purchaser to the Tax Administrator.
- B. Retailers making sales of vehicles not requiring registration by the Registry of Motor Vehicles are required to add and collect the tax.
 - 1. EXAMPLE: A retailer selling farm tractors, construction vehicles, trail bikes, motor bikes, or the like, would be required to add and collect the sales tax.
- C. Prior to registration the sales transaction and purported use have to be segregated into one of the following three categories:
 - 1. Sales made by Rhode Island motor vehicle dealers;
 - 2. Sales made by persons other than a Rhode Island motor vehicle dealer; or
 - 3. Purchases of motor vehicles for exempt use irrespective of from whom it was purchased.
- D. Sales made by Rhode Island Motor Vehicle Dealers
 - 1. Registration requirements for dealers are the same as for any retailer.
 - 2. Although the dealer cannot add the tax to the sales price except when required on a sale to a nonresident (see § 28.23 of this Part) the monthly return filing requirements are the same as any other retailer except the dealer may deduct the amount of gross receipts derived from sales of motor vehicles from the total gross receipts, provided, the dealer can substantiate these amounts as mentioned below.
 - 3. Each dealer at the time a motor vehicle is sold prepares the details of the sales transaction on such form as the Tax Administrator may prescribe. The presently prescribed multiple four-part form is entitled "Dealer's Statement of Sale-Motor Vehicle, Purchaser's Tax Return (T-336-1)." The Tax Administrator requires the signatures of the purchaser and the dealer or his or her authorized agent.

4. The first two copies are given to the purchaser by the dealer for presentation with motor vehicle registration forms at the Division of Motor Vehicles.
5. The Division of Taxation's copy is then submitted with the dealer's quarterly reconciliation sales and use tax return. The total sales price of all individual copies submitted must equal the deduction amount taken for sales of motor vehicles. The dealer maintains the final copy with its records.
6. Forms have to be prepared for all sales including those sales to other motor vehicle dealers which are considered sales for resale and those sales to bona fide nonresidents whether taxable or not.
7. When a dealer is required to collect tax from a nonresident, refer to § 28.23 of this Part for procedures relating to paragraphs (4) and (5) above.

E. Out-of-State Motor Vehicle Dealer Sales

1. The use tax applies to the sale price of automobiles delivered at a factory or place of business in another state for use in this state. The sale price in this case is the amount actually agreed to be paid for the goods even though such amount is less than the list price at a Rhode Island seller's place of business. If the sales contract is entered into with a Rhode Island automobile dealer, under the law the purchaser must nevertheless pay the sales or use tax due directly to the Tax Administrator or his/her agent.
2. If the automobile is purchased directly from the factory or dealer in another state or from any other person for use in this state, the purchaser must make payment of the tax to the Tax Administrator or his/her agent as a condition precedent to obtaining a registration for the motor vehicle.
3. The purchaser shall prepare a Use Tax Return-Motor Vehicles form (T-334-1) for presentation with motor vehicle registration forms at the Registry of Motor Vehicles.
4. A bill of sale or copy thereof substantiating the selling price must also be shown.

F. Purchases Exempt from the Tax

1. A Sales or Use Tax Exemption Certificate -- Motor Vehicles (Form T-333-1) shall be prepared and all reasons for claimed exemption shall be stated.

2. The Exemption Certificate with any affidavit form or other substantiating data required by the Tax Administrator must be presented with motor vehicle registration forms at the Division of Motor Vehicles.
- G. Any tax form or exemption form presented at the Registry of Motor Vehicles must be approved by the Tax Administrator or his/her authorized representative prior to the issuance of a motor vehicle registration.

28.10 Trade-In Deductions

- A. R.I. Gen. Laws § 44-18-30(23) allows for a trade-in allowance on an automobile given by the buyer in trade to the seller of an automobile, towards the purchase of a new or used automobile. A motor home is treated as a private passenger vehicle which qualifies for the trade-in allowance.

1. **EXAMPLE 1:**

A customer purchases an automobile from a dealership and trades in an automobile to the dealer (seller). The trade in allowance is deducted from the sales price in determining the amount of the sale subject to tax.

2. **EXAMPLE 2:**

A customer purchases an automobile from a dealership and trades in a truck to the dealer (seller). A deduction for the trade allowance is not allowed from the sales price in determining the amount of the sale subject to tax, since the vehicle traded in is a truck.

3. **EXAMPLE 3:**

A customer purchases an automobile from a dealership and trades in an automobile to the dealer (seller). In addition, the customer receives a manufacturer's rebate on the purchase of the automobile. Both the trade in allowance and the amount the manufacturer's rebate are deducted from the sales price in determining the amount of the sale subject to tax.

28.11 Transfer of Motor Vehicle by Conditional Vendee

Whenever a person who has purchased a motor vehicle on a conditional bill of sale or other financing arrangement transfers the vehicle thus acquired to another person who assumes liability or obligation for paying off the unpaid balance due on that vehicle, the transactions will be regarded as a casual sale of the vehicle from the vendee to the new owner and the new owner must pay the tax before he or she will be permitted to register the vehicle.

28.12 Purchase of a Repossessed Vehicle

The purchase of a repossessed motor vehicle from a finance company, or other financial institution, organization or person is regarded as a taxable purchase and the purchaser thereof shall be obliged to pay the tax as a prerequisite to the registration of such vehicle.

28.13 Registration of Motor Vehicles Obtained Through Property Settlements in Divorce Cases

- A. Where, by agreement of the parties oral or otherwise regarding a property settlement in a divorce case, one of the parties gets an automobile, such motor vehicle may be registered without payment of tax provided:
 - 1. A statement is submitted by the registering party or their attorney setting forth the facts in the matter and giving the:
 - a. Name of the case;
 - b. Docket number of the case;
 - c. Name of the court; and
 - d. Proof that the use tax was paid to this state.

28.14 Sale of Motor Vehicles by an Administrator, Guardian, Executor, or the Like

The sale of a motor vehicle by any one of the above persons is subject to the tax. Since the incidence of the tax falls on the purchaser, the purchaser is liable for the payment of the tax when he or she seeks to register the motor vehicle.

28.15 Transfer of Motor Vehicles via the Merging of Corporations

- A. The transfer of motor vehicles from merging corporations to the surviving corporation is not subject to the sales and use tax. The term “purchased from any retailer” (R.I. Gen. Laws § 44-18-20) as well as the term “purchased from other than licensed motor vehicle dealer” (R.I. Gen. Laws § 44-18-21) implies a contract of sale or exchange. However, in the case of mergers, the ownership of property, including motor vehicles, vests in the surviving corporation by operation of law. In such cases, there being no contract of sale or exchange relative to the motor vehicles, the tax is not applicable to such a transaction.

- B. Where a vehicle is transferred through a merger, a duly certified copy of the MERGER or CONSOLIDATION AGREEMENT on file with the Secretary of State must be submitted along with the form of sales or use tax exemption certificate. A certified copy of such agreement, furnished by the Secretary of State or by his deputy, shall constitute evidence of such merger or consolidation.
- C. A complete list of all motor vehicles for which registration is thus sought must also be submitted containing the make, year, model, motor or serial number and proof that the use tax was paid.

28.16 Gifts of Motor Vehicles

- A. Where a motor vehicle is purchased from an out of state retailer with the intent to gift it to a person that will store, use, or consume it within this state, then the tax applies. The donor will be required to pay the use tax at the current rate on the sale price charged to him or her by the out-of-state retailer, less any trade-in allowance where applicable, as a prerequisite to the donee's right to obtain registration plates.

- 1. **EXAMPLE:**

A husband and wife go to Massachusetts (MA) together. The husband buys a car from a MA dealer and the bill of sale indicates that he is the purchaser. While in Boston he gives the vehicle to his wife as a gift. The wife then attempts to register the vehicle in Rhode Island, claiming that because the vehicle was a gift to her it is tax exempt.

- a. Neither R.I. Gen. Laws § 44-18-20 nor R.I. Gen. Laws § 44-18-21 requires that the wife be the purchaser. Moreover, her use of the motor vehicle is consistent with the definition of "storage" and "use" as set forth under R.I. Gen. Laws § 44-18-9 and R.I. Gen. Laws § 44-18-10. Thus the transaction is taxable.
- B. The residence of the donor and his or her relationship to the donee is immaterial in cases involving newly acquired vehicles (new or used) given to the donee for registration in Rhode Island. Any sales tax legally paid by the donor in the state of purchase may be credited against the Rhode Island use tax on such vehicle.
 - C. Under the provisions of R.I. Gen. Laws § 44-18-25 there is a PRESUMPTION that:
 - 1. The use of all tangible personal property is subject to the use tax; and

2. All tangible personal property intended for delivery or that is delivered in this state is delivered for storage, use, or other consumption in Rhode Island.
- D. Prior to obtaining a motor vehicle registration, the donee is required to:
1. Furnish a notarized letter indicating the name and address of donor or donee, a description of the vehicle with the Vehicle Identification Number and proof that tax was previously paid on such vehicle; i.e. receipt, use tax return, etc.
 2. Complete Rhode Island Division of Taxation Affidavit of Gift or Motor Vehicle.
- E. If it is a gift between immediate family blood relatives, i.e. mother/father, husband/wife, sister/brother and children thereof, a gift letter showing names, addresses, relationship and description of vehicle with the Vehicle Identification Number along with proof that the tax was previously paid is required.

28.17 Bequests of Motor Vehicles

A motor vehicle which is received as a bequest or as a distributive share from the estate of a decedent may be registered without payment of the Rhode Island sales and use tax. A statement should be submitted by the attorney or other official representative setting forth the facts, including the name of the decedent, the docket number of any probate proceeding, the name of the probate court and that the vehicle constitutes either a specific bequest or a distributive share.

28.18 Motor Vehicles Awarded as Prizes

- A. Motor vehicles which have been awarded as prizes by organizations or associations which are operated exclusively for charitable, educational, or religious purposes (which qualify under R.I. Gen. Laws § 44-18-30(5)) may be registered tax free by the winner. The winner must present:
1. the registration application;
 2. a statement appearing on the official stationery of the exempt organization awarding such prize that is signed by an authorized officer or agent showing that the vehicle sought to be registered was awarded as a prize;
 3. the name and address of the winner;
 4. the make, year, model and motor or serial number of such vehicle; and

5. the name of the dealer from whom such exempt organization purchased such vehicle.
- B. Such official statement must contain the exemption number assigned to the exempt organization by the Rhode Island Tax Division.

28.19 Use of Motor Vehicles by Dealers

A. General Rule

The purchase of a motor vehicle, trailer or other vehicle by a licensed motor vehicle dealer who purchases the vehicle for resale in the regular course of business is exempt from the sales and use tax. During the period in which the vehicle is held for resale, the dealer may use it for demonstration or display without incurring a liability for sales and use tax. If a vehicle is used by a licensed motor vehicle dealer for purposes other than demonstration or display, a tax is due on the total cost of the vehicle.

B. Use of Dealer Plates

1. A motor vehicle, trailer, or other vehicle bearing a dealer license will be subject to tax if that vehicle is used for purposes other than demonstration and display. The following uses of vehicles bearing dealer plates are held to constitute demonstration and display:
 - a. The motor vehicle being driven is of the type that the dealer offers for sale; and
 - (1) The vehicles driven by sales personnel;
 - (2) The vehicles driven by bona fide employees other than sales personnel whose duties include generating sales and/or assisting the sales department in selling vehicles;
 - (3) Vehicles driven by potential buyers for purposes of a test drive;
 - (4) Vehicles transported by the dealership to and from auction, car swaps, etc; or
 - (5) Vehicles driven by technicians for road test purposes
2. The use of vehicles in §§ 28.19(B)(1)(a)(i) and (ii) of this Part, are held to constitute demonstration and display even though used on public thoroughfares and after work since the visibility of the vehicles can

stimulate customer interest and the drivers of those vehicles are sales personnel or other bona fide employees of the dealer whose duties includes assisting the sales department in selling vehicles. In order for the operation of the vehicles to be deemed demonstration and display, such operation is limited to a geographical area in which potential buyers would normally be located.

C. Dealer Registered Vehicles

Franchised new car dealers holding a valid sales tax permit may register new vehicles in the name of the dealer upon payment of a tax based in one-third (1/3) of the cost of the vehicle to the dealer provided that said vehicle is acquired for resale by the dealer and the use of the vehicle is limited to demonstration and display as defined by § 28.19(B) of this Part.

D. Loaners

1. If a motor vehicle dealer which is also engaged in leasing/renting vehicles on a daily or other basis elected to collect the sales tax upon lease/rental of the rental fleet vehicles subsequently allows the use of loaners from the rental fleet, the dealer will be liable for a use tax based upon the fair market rental fee normally charged to customers for the rental of the same vehicle. In order to qualify as a lease/rental vehicle, the vehicle must be registered and titled to the dealer as part of its rental fleet.
2. A motor vehicle dealer that allows its customers the use of a vehicle from its inventory while the customer's own vehicle is being serviced or repaired shall be liable for a use tax to be computed at a rate of .15 percent (.0015) of the list price of the vehicle for each day that the vehicle is used as a loaner.
3. This provision shall only apply to loaners that comply with the provisions of R.I. Gen. Laws § 31-3-20. The surcharge imposed under R.I. Gen. Laws Chapter 31-34.1 shall not apply to loaners taken from the dealer's inventory.

28.20 New Motor Vehicles Purchased by Used Car Dealer or Auto Body Mechanic

When a used car dealer or auto body repairer holding a motor vehicle dealer's license and permit to make sales at retail purchases a new motor vehicle from a new car dealer such used car dealer or auto body repair shall be deemed liable for the payment of tax thereon unless such used car dealer or auto body repairer can show, by proper records, that the motor vehicle in question was actually

purchased for resale in which case the tax shall not apply; provided, however, when the used car dealer or auto body repairer sells the motor vehicle in question within thirty (30) days of its purchase from the new car dealer it shall be presumed that such used car dealer or auto body repairer purchased the motor vehicle for resale.

28.21 Automobile Repairers

- A. Automobile repairers or “body shops” are retailers of repair parts for motor vehicles. They should segregate on the invoices to their customers and in their records, the fair retail selling price of parts from the charges for repair labor, installation labor and other services. If the labor and other services are not thus shown separately from the selling price of the parts it will be presumed that the entire charges represents the sale price of the parts. However, the automobile repairer or “body shop” shall separately state such charges when requested by the customer. Failure by the retailer to comply with the customer’s request to separately state the labor or service charges will subject the retailer to the penalty provisions set forth in RI. Gen. Laws Chapter 6-13.1, entitled “Deceptive Trade Practices.”
- B. In such event that labor or service charges are separately stated, such charges are not subject to the imposition of sales and/or use tax.
- C. Repairers are the consumers of sandpaper, buffers, rags, masking tape, prime body filler, paint, tools and related supplies used by them in repair and/or painting of motor vehicles and therefore the tax is due and payable upon the acquisition of such purchase.

28.22 Non-Motorized Vehicles and Trailers

- A. Non-Motorized Vehicles – Nonrecreational Trailers

Retailers of boat trailers, horse trailers, storage trailers, utility trailers and other nonrecreational trailers are required to add and collect the Rhode Island sales tax to the purchase price regardless of the requirement that the trailer is subject to registration by the Division of Motor Vehicles except as provided in § 28.22(B) of this Part. The retailer must collect the tax whether or not the purchaser is a resident of Rhode Island.

- B. Non-Motorized Vehicles – Recreational Trailers

- 1. Sold to Residents: The sales or use tax on non-motorized recreational trailers purchased by residents and used as a temporary dwelling for travel, camping, recreational and vacation uses requiring registration shall

not be added by the retailer but shall be paid directly by the purchaser to the tax administrator's representative at the time of Rhode Island registration or by the 20th of the month next following the date of purchase, whichever is earlier.

2. Sold to Nonresident: See § 28.23 of this Part "Motor Vehicles and Non-Motorized Recreational Vehicles Sold to Nonresidents".

28.23 Motor Vehicles and Non-Motorized Recreational Vehicles Sold to Nonresidents

- A. Rhode Island dealers of motor vehicles and/or non-motorized recreational vehicles are required to add and collect sales tax on the sale of a motor vehicle and/or non-motorized recreational vehicle to a bona fide nonresident of this state, whose state of residence imposes a sales tax on a motor vehicle or non-motorized recreational vehicle to its nonresidents.
- B. The dealer is required to collect tax on the sale at a rate equal to the rate that would be imposed in the nonresident's state of residence. However, the rate imposed may not exceed the Rhode Island sales and use tax rate. Taxes collected by the dealer must be remitted to the Rhode Island Division of Taxation on its monthly sales and use tax return.
- C. Dealers, when required to add and collect a tax on the sale of motor vehicles or non-motorized recreational vehicles to nonresidents, shall take into consideration the law of the state of the nonresident as it relates to the trade-in of motor vehicles or non-motorized recreational vehicles.

1. EXAMPLE:

If a bona fide nonresident from State X buys a \$15,000 truck from a Rhode Island dealer less a \$5,000 trade-in or his truck, the Rhode Island dealer must add and collect a 5% Rhode Island sales tax (the equivalent State X sales tax) on the net selling price of \$10,000. A trade-in of the truck is allowed because State X allows for a trade-in of trucks. The Rhode Island sales tax in the amount of \$500 must be shown separately on the customer's bill of sale.

- D. When filling out the "Dealer's Statement of Sale-Motor Vehicle Purchaser's Tax Return (T-336-1)" or "Dealer's Statement of Sale-Recreational Vehicle Purchaser's Tax Return (T-337)" for a nonresident sale (whether taxable or not), the nonresident's driver license number and expiration date must be indicated in the empty space at the top of the form.

- F. The blue copy of the T-336-1 or the yellow copy of the T-337 is to be filed with the dealer's monthly Rhode Island sales and use tax return, the second copy to be furnished to the nonresident and the third copy to be kept by the dealer.

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