New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-M-02(3)S
Sales Tax
June 7, 2002

Sales and Use Tax Treatment of Motor Vehicles Used by Dealers

Effective June 1, 2002, a motor vehicle dealer may compute the state and local use tax due on "mixed use" vehicles based on a 1% depreciation method when the requisite conditions are met. A 2% depreciation method was used before June 1, 2002. Also, for the purpose of determining whether the 1% depreciation method may be used, the maximum mileage allowable for a "mixed use" vehicle used as such for more than six months but not more than one year, is increased from 9,000 miles to 15,000 miles. This memorandum reiterates the current Tax Department policy explained in TSB-M-87(2)S, *Taxability of Motor Vehicles Used by Dealers*, pertaining to the tax treatment of "mixed use" vehicles and also institutes the above changes in policy.

Mixed use vehicles

As stated in TSB-M-87(2)S, vehicles held in inventory exclusively for resale but used for demonstration to prospective customers are not taxable to the dealer if used solely for demonstration. Also, no tax is due from dealers for vehicles held in inventory and loaned without charge to a high school driver education program.

Any vehicle held in a dealer's inventory for resale (including a vehicle used for demonstration purposes) but used occasionally for business or pleasure by the dealer or one of its owners or employees is subject to state and local use tax as a "mixed use" vehicle. In addition, a "mixed use" vehicle includes any vehicle held in a dealer's inventory for resale, but loaned to a customer while the customer's vehicle is under repair by the dealer, provided that there is no separate charge attributable to use of the vehicle by the customer, or the charge does not reflect a fair market rental rate for such use (a "loaner vehicle"). If a market rate is charged for the rental of a vehicle, the charge is subject to the appropriate sales and use taxes and the 5% special tax on passenger car rentals.

Use tax due on a "mixed use" vehicle must be reported on the dealer's sales and use tax return under *purchases subject to tax* and paid with the dealer's return that covers the period of use. A dealer may compute the state and local use tax due on "mixed use" vehicles based on the 1% per month depreciation method, described below, instead of paying use tax on the total cost of the vehicles.

Subject to the limitations and conditions described below, use tax on a "mixed use" vehicle may be computed by multiplying the dealer's total cost of the vehicle by 1% per month for each month of "mixed use," and then multiplying the product of these amounts by the applicable state and local sales tax rate. A vehicle has been used for a month of "mixed use" if it has been used as such during any part of a month.

A motor vehicle dealer may apply the 1% method to a “mixed use” vehicle provided that the vehicle is held in inventory, is available for sale, and the vehicle is used by the dealer:

- for six months or less with no mileage restriction; or

- for more than six months but no more than one year, and the mileage does not exceed 15,000 miles for the entire 12 months.

If the vehicle's mileage exceeds 15,000 miles and it is used for more than six months, or, regardless of the mileage, if the vehicle is used for more than 12 months, use tax must be computed based on the dealer's total cost of the vehicle plus interest and penalties (if applicable), computed from the date that a return for the occasion of first use would have been due. Credit for use tax paid under either the 1% method or the previous 2% method is allowed.

In addition, a dealer does not qualify for the 1% method of computing use tax if:

- the dealer seeks or intends to seek a trade-in allowance on the vehicle, regardless of whether the dealer operates as a single entity or as more than one entity; or

- the dealer depreciates or takes an investment tax credit with respect to the vehicle.

If a dealer is disqualified under either of these conditions, but had already been computing use tax using the 1% or 2% depreciation method, use tax is due on the dealer’s total cost of the vehicle plus interest and penalties (if applicable), computed from the date that a return for the occasion of first use would have been due, minus a credit for use tax paid under the 1% or 2% depreciation methods. A “mixed use” vehicle may be registered either in the dealer’s name, or used with dealer plates.

A dealer's total cost of a new vehicle, for purposes of computing use tax, is the amount the dealer paid for the vehicle plus delivery charges. On a used vehicle, the dealer's total cost is the amount the dealer paid for the vehicle (or the amount of the trade allowance applied toward the purchase of another vehicle), plus the value of all repairs made to the vehicle since being acquired by the dealer. On a vehicle leased by the dealer for a year or more, the dealer's total cost includes the total amount of the lease payments for the entire term of the lease, and any amount charged for renewal options.

Any vehicle assigned to a friend or family member who is not an owner, officer, or employee of the dealer does not qualify for the 1% method of computing use tax.

Example of computing use tax on a "mixed use" vehicle

A dealer purchases a new motor vehicle with a total cost of $15,300, which consists of the invoice price plus delivery charges. The motor vehicle was used by the dealer as a "mixed use" vehicle for 2½ months during the sales tax filing period. The applicable combined state and local sales and use tax rate is 7%. Use tax due on the "mixed use" of the vehicle is computed as follows:

Total cost of vehicle	*$15,300*
Depreciation rate (1%)	*×.01*
	$153.00
Months used (2½)	*× 3*
	$459.00
Tax rate (7%)	*×.07*
Tax due on use	*$ 32.13*

Record keeping requirements

A dealer must maintain adequate records to verify the use of a vehicle as a "mixed-use" vehicle. A record of **all** of the following information must be maintained by the dealer for each "mixed use" vehicle:

- stock number and vehicle identification number (VIN) identifying the vehicle
- name and title of person to whom the vehicle is assigned
- dates assigned and dates returned
- mileage at date of assignment and date of return
- disposition of vehicle
- whether registration is in the dealer's name or the vehicle is used with dealer plates
- whether depreciation or an investment tax credit has been or will be claimed on the vehicle
- whether a trade-in allowance has been or will be taken on the vehicle.

All required information outlined in this memorandum must be maintained by the dealer on all "mixed use" vehicles. If the records are not properly maintained by the dealer for any "mixed use" vehicle, state and local use tax will be due on the total cost of the vehicle to the dealer, with interest and penalties (if applicable) due from the date of first use by the dealer. Credit is allowed for any use tax previously paid on the vehicle by the dealer.

All other policies and procedures set forth by the Tax Department policy in TSB-M-87(2)S, *Taxability of Motor Vehicles Used by Dealers*, pertaining to the tax treatment of "mixed use" vehicles, that are not specifically amended or rescinded by this memorandum, are continued.