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Automobile Dealers  
Association**

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- Registration Renewals
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- Plate Surrenders
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- Repossessed Vehicles Processing
- MV-82 & Transmittal Forms Supplied
- Boat Registrations – Renewed and Duplicates
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**CONNECTICUT  
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# December Education and Training Classes

**December 5**

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Communications

**December 6**

Information & Cyber  
Security Guidelines  
for Automotive  
Dealerships

**December 6**

Annual Labor Law  
Seminar

**December 12**

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Transition: Key  
Skills for New  
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# Current Trends in New York State Sales Tax Audits and 2023 Year-end Reminders

November 16, 2023

Presented by Paul Charles, CPA

Principal-Tax, CLA



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# Learning objectives

What to do when you receive a sales tax  
audit letter

How to protect the dealership from large  
sales tax assessments

Year-end tax savings ideas



## Current Trends in NYS Sales Tax Audits

1. The sales tax audit process
2. Recent sales tax audits are focusing on the following areas:
  - Loaner vehicles
  - Unpaid sales tax on expenses
  - Unpaid sales tax on fixed assets
  - Correct tax charged on repair orders
  - Mileage on new and used cars



# What to do when you get this letter?



New York State Department of  
**Taxation and Finance**  
www.tax.ny.gov  
Transaction Field Audit Bureau  
Rochester District Office  
340 Main Street East, Rochester, NY 14604-2108  
Phone: (585) 530-8432 Fax: (518) 435-8490

November 23, 2021

Initial Here

Mr. Paul Charles  
Richards, Witt & Charles LLP  
100 Ring Rd West  
Garden City, NY 11530

Your Dealership, Inc.  
ID Number: 12-345678  
Audit Period: 12/01/2018 -11/30/2021  
Tax Article(s): 28 & 29  
Case ID(s): X12345689

## **We've scheduled an audit of your New York State sales and use tax records.**

This will confirm a telephone conversation with a Tax Department auditor on **October 25, 2021** setting up a meeting at your client's place of business from **December 1, 2018** to November 30, 2021. If you have questions, please call your auditor, **Mrs. Jane Smith** at **(585) 555-5555**

Please confirm receipt of this Information Document Request (IDR) by either contacting your auditor by phone at the number listed above or returning an initialed copy of this letter.

### **What to expect**

In a sales and use tax audit, Tax Department auditors will review your financial records to confirm that you've complied with all applicable tax laws. At the initial conference, the auditor can answer any questions you may have about the audit process. To learn more, see the enclosed Publication 130F, *The New York State Tax Audit—Your Rights and Responsibilities* and Publication 900, *Important Information for Business Owners*.





# Your Accountant Will

Prepare a NY Power of Attorney form for the owner to sign and then send to the auditor



Contact the auditor and plan the dates of the audit




Start working with you to gather the requested information



This form can be filed online using your NYS Online account or filled out manually and faxed or emailed to the auditor.






New York State Department of Taxation and Finance  
New York City Department of Finance

**Power of Attorney**

**POA-1**  
(6/17)



**Read instructions** on the back before completing this form. For estate tax matters, use Form ET-14, *Estate Tax Power of Attorney*. Filing Form POA-1 **does not automatically revoke** any previously filed powers of attorney (POAs), but may affect who receives mailings.

**1. Taxpayer information** (taxpayers must sign and date this form in section 5)

Taxpayer's name		Taxpayer's identification number	
Spouse's name (if you filed a joint tax return and both spouses are appointing the same representative)		Spouse's SSN	
Mailing address (number and street with apartment or suite number, or PO Box)	City	State	ZIP code
Country (if not United States)			

**2. Representative information** (special conditions may apply, see instructions)

Primary individual representative name		Firm name (if any)	Telephone number
Mailing address (number and street with apartment or suite number, or PO Box)		City	State ZIP code
Country (if not United States)		Email address	
Title or profession (see instructions)		PTIN, SSN, or EIN	NYTPRN (if applicable)
Additional individual representative name		Firm name (if any)	Telephone number
Mailing address (number and street with apartment or suite number, or PO Box)		City	State ZIP code
Country (if not United States)		Email address	
Title or profession (see instructions)		PTIN, SSN, or EIN	NYTPRN (if applicable)

**3. Mailings**

We will send copies of notices and other communications related to the matters authorized in section 4 to the **primary individual representative** listed above. If you want them sent to a different representative who has a POA on file for the same matters, enter that individual's name below.

Name of representative to receive copies of notices and other communications: \_\_\_\_\_

**4. Authority granted**

The taxpayers named in section 1 appoint the individuals named in section 2 to act as their representatives with **full authority** to receive confidential information and to perform **any and all acts** the taxpayers can perform, unless limited below, in connection with the following matters. Your appointed representatives will **not** have the authority to sign tax returns or delegate their authority to another individual unless specifically authorized below.

Mark an **X** in all boxes that apply. If this section is left blank, this POA will cover **all tax types for all tax periods**.

Tax type	Years, periods, or transaction	Tax type	Years, periods, or transaction
<input type="checkbox"/> All		<input type="checkbox"/> Sales and Use	
<input type="checkbox"/> Corporation		<input type="checkbox"/> Withholding	
<input type="checkbox"/> Partnership/LLP/LLC		<input type="checkbox"/> Other (explain):	
<input type="checkbox"/> Personal Income			

Mark an **X** in the box if this POA is for:  An offer in compromise (OIC) case  A conciliation conference or Tax Appeals hearing

I want to limit the authority granted by this POA as follows (explain): \_\_\_\_\_

I have other POAs on file for the specific matters identified above and want to revoke all of these other POAs \_\_\_\_\_

I authorize the representatives in section 2 to do the following:

Sign tax returns (including refund/credit applications) on my behalf  Delegate his/her/their authority to another individual

**5. Taxpayer signature**

I certify, under penalty of perjury, that I am the taxpayer named in section 1, or a corporate officer, partner (except a limited partner), member or manager of a limited liability company, or fiduciary acting on behalf of the taxpayer, and that I have the authority to execute this POA.

Signature	Print or type name (and title, if applicable)	Date	Telephone number
Spouse's signature (required if spouse listed in section 1)	Print or type name	Date	Telephone number

► **IF NOT SIGNED AND DATED, THIS POA WILL NOT BE PROCESSED.** See instructions on back for *Where to send Form POA-1*.

02800106170094



# The typical document request

New York State Department of Taxation and Finance  
www.tax.ny.gov  
Transaction Field Audit Bureau  
Rochester District Office  
340 Main Street East, Rochester, NY 14604-2108  
Phone: (585) 530-8432 Fax: (518) 435-8426

IDR #01

**Information Document Request**

Taxpayer name: Your Dealership, Inc.	Audit years: 12/01/2018 - 11/30/2021
Identification number: 12-345678	Case ID: X12345678
Auditor: Mrs. Jane Smith	Article(s): 28 & 29
Requested of: Mr. Paul Charles	Date requested: October 25, 2021

*Date(s) Provided* column completed by:

**Your response is due by: 12/24/2021**

	<i>Name</i>
<i>Description of documents and information requested:</i>	<i>Date(s) Provided</i>
1. Sales tax returns, worksheets, and canceled checks showing taxes paid	
2. Federal income tax returns (Forms 1120, 1065, or 1040)	
3. New York State corporation tax returns	
4. General ledger	
5. General journal and closing entries	
6. Sales invoices	
7. All exemption documents supporting non-taxable sales, including: <ul style="list-style-type: none"> <li>• resale, exempt use, exempt organization, and capital improvement certificates</li> <li>• any other documentation necessary to prove non-taxable sales</li> </ul>	
8. Chart of accounts	
9. Fixed asset purchase/sales invoices	
10. Expense purchase invoices	
11. Merchandise purchase invoices	
12. Bank statements, canceled checks, and deposit slips for all accounts	
13. Cash receipts journal -- including sales journal, if applicable	
14. Cash disbursement journal -- including purchase journal, if applicable	



# The typical document request

15. The corporate book, including minutes, board of directors, and articles of Incorporation	
16. Depreciation schedules	
17. Lease/Rental Agreements	
18. Waste Tire Management Fee returns	
19. MV-50's for entire audit period	
20. Books of Registry (a/k/a Police Books) for entire audit period	
21. Dealer Financial Statements for entire audit period	
22. Car Jackets (a/k/a Deal Jackets or Customer Files) for entire audit period	
23. Dealer Floor Plan for entire audit period	
24. Service Vehicle Replacement Report for entire audit period	
25. Demo/Loaner/Rental Vehicle Log for entire audit period	
26. Wage reporting Tax returns (Payroll Taxes)	
27. Manufacturer Parts Statements (Open Account)	



## Understanding Impacts

The Agent assigned to your audit can greatly impact the results

NYS sales tax agents can come from various locations around the state; from Buffalo and Rochester to Long Island, Queens and Brooklyn

The agent's knowledge of auto dealerships varies widely from one auditor to another

These things will greatly affect the audit results



## Loaner Vehicles

There is a controversy over the department of taxation's position on sales and use tax on loaner vehicles.

Certain agents are taking the wording from publication 838 rather than the wording from TSB-M-02(3)S.

The difference is significant and affects the way loaners have been treated for over 20 years.



# Publication 838

A guide to sales tax or automobile dealers has the following disclaimer:

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication.

Publications are updated regularly and are accurate on the date issued. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.



# Loaner Vehicles

TSB-M-02(3)S states that:

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.

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.....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.

Publication 838, page 19 states:

If a dealer takes a vehicle out of inventory, and loans it to customers without charge, or at a rate that does not reflect the fair market rental value, and not all of those customers using the vehicle are contractually entitled to a loaner, then the vehicle is subject to use tax based on the dealer’s purchase price, plus delivery charges.





# Loaner Vehicles

- The definition of loaners as “Mixed Use” vehicles is missing from the publication and some agents are interpreting this to mean full sales tax is due on loaner vehicles rather than the 1% use tax as described in the TSB.
- As the disclaimer states, the Publication is not the law.
- So what do dealers do who have been following the rules in the TSB?



# Sales Tax Audit Issue – Mixed Use Vehicles

Contractual obligation to provide loaner vehicles can avoid use tax:

- Clearly state on vehicle sales invoices or other written documents given to customers that the sale of a vehicle entitles the customer to a free loaner vehicle when their car is in for repair.
- If you rent a loaner vehicle for a customer and the sale documents clearly note that a loaner will be provided, the dealer does not have to pay sales tax to the rental car company under the resale exemption.

Audit issues:

- Service loaners given under an extended warranty – warranty must explicitly state that loaner is to be provided or it is subject to tax
- Any out-of-pocket cost for rental of car under an extended warranty is subject to tax.
- Loaners provided to customers who did not purchase car from dealer – set aside a number of loaners to use for this purpose and pay use tax monthly



# Mileage on New and Used Cars

- Recent sales tax audits have resulted in large assessments for additional taxes owed due to mileage shown on new and used cars with no supporting documentation.
- Agents are looking at print-outs from VERIFI for cars sold with any miles greater than when stocked in.
- Lack of documentation may cost you tens of thousands of dollars in use tax assessments.



Lack of  
*documentation*  
may cost you tens of  
thousands of dollars  
in use tax  
assessments



# Mileage on New and Used Cars

## Documentation - Loaner, Demo and Test Drive Logs

- A log documenting use of cars taken from inventory is vital to avoiding large sales tax assessments. Providing a log to an agent at the beginning of audit may expedite the entire audit process.
- The log should show the stock number, name and title of person driving the vehicle, dates assigned and dates returned and mileage at the beginning and ending of use.
- Make note of the use as a demo, loaner or test drive vehicle.



# Mileage on New and Used Cars

- Dealer may compute use tax due on “mixed use” vehicles (i.e. service loaners or demos used by employees) on 1% of the cost per month if the vehicle is used:
  - For six months or less with no mileage restriction; or
  - For more than six months but no more than one year and for less than 15,000 miles.
- If the mileage exceeds 15,000 miles or number of months used exceeds 12 months, FULL sales tax may be assessed on the cost of the vehicle.
- Report the total of the 1% of the cost on the return in the “Purchases subject to use tax” line and pay in the tax with the return
- Test drive vehicles are exempt from use tax. Documentation is vital.



# Mileage on New and Used Cars

- In an audit, agents will make a spreadsheet of all new and used cars with mileage added while the car was in inventory.
- Use tax will be computed on the number of months the car was in stock.
- Your job is to prove how long the car was actually used, whether it was a loaner car, a demo or a test drive car.
- If a car shows in stock for over 12 months and has mileage, agents can charge you FULL sales tax on that vehicle unless you can document the time actually used.



# Mileage on New and Used Cars

- There is no guidance from NY State on allowed miles on cars in stock.
- Dealers must account for and document moving cars from storage lots to showroom, or back and forth to auctions.
- Some agents allow up to 150 miles, some up to 400. Each audit stands on its own.
- Applies to new and used cars, loaners, demos and test drive vehicles.





# Sales Tax Audit Issue – Documentation

In addition to a demo log, prepare a repair order for cleaning the car for demo use and again for returning it to inventory.

Document when cars come on and off demo and loaner service

If the dates are not documented, an auditor can assess use tax on the entire period the car was in stock, rather than the months it was used.



# Additional Recommendations to avoid Use Tax Assessments

- Have employee responsible for stocking cars into VERIFI notify the office manager of any cars sold with miles greater than when stocked in.
- Record accurate mileage when stocking used cars into VERIFI.
- Do not record mileage when car is appraised. Always update the current mileage when car is traded in at later date.
- New and used car managers must notify the office of any car used by employees or their families so it can be added to the log.



## Use Tax on Purchases

If you are filing your sales tax returns without reporting purchases subject to use tax, you increase the chances of being pulled for an audit.



# Unpaid Sales Tax on Expenses



Sales tax agents are reviewing expense accounts and looking at invoices for unpaid sales tax.



A test period may be elected and the findings spread over the three-year audit period.



If you consume it or use it is subject to sales or use tax.

# Unpaid Sales Tax on Expenses

Examples of typical items where sales tax may not be charged on the invoice and use tax is due:

1. Shop supplies – (rags, cleaners, sprays, etc.)
2. Key tags and plate frames
3. Online and out of state purchases
4. Exterminating services
5. Parts used in repairs to company vehicles
6. Equipment repairs and rental
7. Showroom repairs such as painting, carpet or plumbing unless it is considered a capital improvement
8. Office supplies
9. Software and information services



# Unpaid Sales Tax on Expenses

As a general rule, furnishing information created or generated from a common database, or information that is widely accessible, is a taxable information service.

Taxable Information services included:

- Credit monitoring services and information furnished by credit reporting bureaus
- Directory and mailing list services
- Employment history reports
- Internet customer leads unless they are exclusive to your dealership



# Unpaid Sales Tax on Expenses

It is cheaper to pay use tax when incurred than paying it resulting from an audit.

The A/P department should watch for invoices with no tax charged and bring it to the attention of the office manager

For purchase invoices where sales tax was not charged:

Make a copy of the invoice to keep with the sales tax return back up

Report the amount of the purchase on the return in the "Purchases subject to use tax" line and pay in the tax with the return



# Unpaid Sales Tax on Fixed Assets

- Purchases of furniture, machinery and equipment are generally subject to sales tax. Emissions inspection equipment is exempt from sales tax.
- A vendor that doesn't charge you sales tax is not doing you a favor. If there's no tax paid on the purchase of furniture, machinery and equipment, pay in the use tax.
- On an audit, fixed assets purchases are examined for the entire three-year period.
- Keep all invoices for fixed asset purchases in a separate folder for easy reference.





# Unpaid Sales Tax on Fixed Assets – Capital Improvements

- Know the difference between what is taxable and what is exempt.
- See Publication 862 – Sales and Use Tax of Capital Improvements and Repairs to Real Property. Excellent and easy to follow guide.
- “If a contractor does a capital improvement for a customer and the customer provides the contractor with a properly completed Form ST-124, *Certificate of Capital Improvement*, no sales tax is required to be collected from the customer. On the other hand, when a contractor performs a job that constitutes a repair, maintenance, or installation service to real property, sales tax must be collected from the customer.”
- Repairs to both tangible (i.e. machinery) and real property are generally taxable.



# Correct Tax Charged on Repair Orders

- Agents will review repairs orders, usually for a test period, and determine if the proper sales tax was charged.
- For repair work covered under the manufacturer's warranty, no tax is due.
- On an extended warranty repair, sales tax is due on any deductible paid by the customer.



# Correct Tax Charged on Repair Orders— Repairs and Policy Work

- Use tax is due on any parts used by the dealership unless you can properly document that the repairs are the result of a “comeback.”
- Review items charged to policy work or customer accommodation accounts for parts used and not charged to customer repair orders.
- Repair orders on “comebacks” should reference the original repair order to avoid being subject to use tax.
- Use tax is due on parts used to repair company vehicles.



# Sales



Auditors review the general ledger accounts for sales tax payable to verify that tax collected was paid. They will schedule out the entire three-year audit period.



The issue that comes up often is they ignore debits to the accounts for entries such as a reversal of a deal or a reclass to the correct county.



Review the general ledger accounts before an audit to make sure the balances clear out each month or quarter.

# Year-End Reminders



# Beneficial Ownership Information Reporting

Beginning January 1, 2024, the Treasury department's Financial Crimes Enforcement Network (FinCen) requires certain entities to file beneficial ownership information (BOI) reports disclosing the following:

1. Beneficial owners - owns or controls 25% of a company or has substantial control over the company
2. Company applicants - for those entities formed after 1/1/24

Applies to certain corporations and LLC's.

NYS is looking into it's own beneficial ownership information reporting.



# Beneficial Ownership Information Reporting

A large company is exempt from filing if it meets all of the following:

1. Employs more than 20 full time employees,
2. Employees are employed in the US,
3. The entity has a physical office with the US, and
4. Federal tax return has more than \$5,000,000 in gross receipts

Most dealership entities will be exempt but related real estate and management companies may have to file the report.



# Electric Vehicle Credits

For 2023, buyers of electric vehicles can (potentially) claim a federal income tax credit on their 1040s, subject to many rules:

	<u>New Car</u>	<u>Used Car</u>
Maximum Credit	\$ 7,500	\$ 4,000
Sales Price Cap	\$ 55,000	\$ 25,000
MAGI Threshold		
Single	\$ 150,000	\$ 75,000
MFJ/SS	\$ 300,000	\$ 150,000
HOH	\$ 225,000	\$ 112,500
All Others	\$ 150,000	\$ 75,000
Battery/Sourcing Requirements	Yes	No

IRS has an [FAQ on eligibility](#)

US Department of Energy has [a resource](#) to determine car eligibility





# Electric Vehicle Credits

Major changes coming to credit for 2024:

- Option for buyers to transfer credits to dealerships as funds for a down payment on a new or used car eligible for the clean energy credit

US Treasury Department has created an IRS portal for dealerships to register, as the first step in receiving payments for transferred credits. Guidance is slowly coming out on how to handle this process.

- NADA, AIADA working with the US Treasury to ensure a streamlined repayment process is in place once the credit transferability occurs (1/1/2024)

**More risk on dealerships to ensure that buyers are within the MAGI requirements for down payment transferability**



# LIFO Inventory

Using the Last-in First-out method may provide significant tax deferrals.

There is constant discussion by Congress and IRS to potentially repeal the benefit, however, unlikely to occur.

If looking to convert from a C corporation to an S corporation, the LIFO reserve is recaptured into income at time of conversion, but you may continue to use the LIFO method going forward.



# LIFO Conformity Requirements

What are the conformity requirements?

IRC section 472(c) states a taxpayer on the LIFO method for tax purposes must also use the same method for financial reporting. The application of this section primarily concerns statements affecting a full year's operation, whether the same as the taxable year or any other 12-month period.

No violation occurs if the taxpayer issues non LIFO reports or credit statements covering a period of operations that is less than the whole of the taxable year and less than 12 months.



# LIFO Conformity Requirements

Your factory financial statement that is reporting results of operations for a period of twelve months **MUST** include a LIFO adjustment effecting the income or loss.

An estimate or final LIFO adjustment has to be shown on any year-end factory financial statement issued to the financing institutions, to the factory or to any other outside party.

If you do not show a LIFO adjustment on your December statement, you risk the loss of your entire LIFO reserve.

Your interim factory statements (those for a period of less than 12 months) do not have to have a LIFO adjustment on them.



# LIFO Practice Tips

If you prepare a pre-LIFO December statement for internal purposes, make sure that it is not sent to any third parties, banks or manufacturers. Would result in a violation of the LIFO conformity rules.

To maximize the LIFO adjustment at year-end, stock-in all new vehicles with a December invoice date, even if the vehicles were not delivered to the dealership by December 31.



# LIFO Relief

- Many dealers experienced a large reduction in their LIFO inventory reserves in 2021 resulting in significant income tax liabilities.
- NADA and Congress, as well as other industry groups, were trying to get the Treasury Department to provide relief for the businesses facing difficulty replacing vehicle inventory due to the unprecedented supply chain shortages.
- A bill was introduced in Congress which would allow dealers to delay recognition of any LIFO recapture income for 2020 and 2021 and have until 2025 to replenish their inventories.
- The US Treasury Department has indicated support for LIFO relief but nothing has been done to date.



# Used Car Write-downs

- Under Internal Revenue Code 471, dealers can elect the lower of cost or market method for valuing used car inventory.
- Under the lower of cost of market method, used cars can be adjusted to the average wholesale price listed at the end of the year.
- TC Memo 2008-237: Determined the record keeping requirement for used car write-downs
  - Records must have sufficient detail to enable a comparison of similarly equipped vehicles in similar condition:
    - Make, model and year of the vehicle
    - Vehicle condition, mileage and optional equipment
- An official used vehicle guide must be used consistently and the proper guide corresponding to the dealership location and time period must be used.



# Used Car Write-downs – Practice Tips

We recommend using one of the following accounting procedures for posting used car write-downs at year-end:

1. Set up a separate used car write-down account controlled by stock number. The account can be displayed side by side in the used car schedule
2. Post the total write-down adjustment as a lump sum to a separate account, reverse at the following year-end.
3. Documentation should be kept with the schedule of write-downs, including the applicable wholesale price guide.

The write-downs can be recorded as income as the cars are sold or at year-end.





# Other Inventory Reminders

<b>Parts</b>	<b>Floor Plan Assistance and Other Manufacturer's Credits</b>
<p>Have an independent parts physical inventory performed before year-end and adjust the book inventory amount accordingly. Try to arrange an inventory date as close to year-end as possible. Disposal of any obsolete parts can be taken as a deduction.</p>	<p>Floor plan assistance and other manufacturer's credits earned upon the purchase of vehicle inventory may be deferred and recognized as income when the vehicle is sold and not when the credit is received.</p>



# Pass-through Entity Tax (PTET)

- Work-around for allowing company owners to deduct state taxes. With the SALT cap of \$10,000 on all taxes, individuals were not getting tax deduction for state and local taxes paid.
- Applicable to any pass-through entity (partnership/S corporation). Not applicable for single-member LLCs or any disregarded entity.
- Company gets a tax deduction for the NYS tax which would be due on the individual owner's tax return.
- Partners/shareholders get a dollar-for-dollar credit for their share of PTE taxes on their NYS personal income tax return.



# Pass-through Entity Tax (PTET)

- Election is irrevocable for the year it is made. For 2024, the election must be made on the NYS website by March 15, 2024. The return or extension is also due on March 15<sup>th</sup> 2024 and can only be filed online via the NYS website.
- Any overpayments can only be refunded to the company and are not allowed to be applied to the following year.
- Estimated tax payments are required and are due March 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup>, and December 15<sup>th</sup> and can only be made online on the NYS website.



# NYC PTE Tax

For taxpayers who reside in NYC and pay NYC personal income taxes, a NYC Pass-Through Entity tax has been established at a rate of 3.876%.

- The company must make the election for the 2024 NYC PTET along with NYS by March 15, 2024.
- Eligible entities include:
  - a partnership, which has at least one partner or member who is a **city resident individual**
  - an S corporation, with all New York City resident shareholders.



# Tax Rate for NYS PTE

From	Not Over	Rate
\$0	\$2,000,000	6.85%
2,000,000	\$5,000,000	\$137,000 + 9.65% of the excess over \$2,000,000
5,000,000	\$25,000,000	\$426,500 + 10.30% of the excess over \$5,000,000
25,000,000	∞	\$2,486,500 + 10.90% of the excess over \$25,000,000

## Estimated Taxes

For 2024, estimated taxes due to avoid underpayment penalties, are to be paid quarterly by March 15, June 15, September 15, December 15, 2024.

**Reminder: 4<sup>th</sup> quarter 2023 estimate for 2023 is to be paid by December 15, 2023.**

## Be prepared to pay and elect for from the company on March 15, 2024:

- 1) 2023 NYS/NYC PTE remaining balance due with return or the extension
- 2) 2024 NYS/NYC PTE election for 2024 must be made online
- 3) 2024 1<sup>st</sup> quarter NYS/NYC PTET estimate



# Important Year-end Reminders

The Sec 199A (20%) deduction results in significant tax savings for eligible business owners. Reducing the income of the dealership by large salaries to owners of S Corps will cost the owner additional income taxes and may affect the deductibility of non-floor plan interest. This affects S Corps only, not C Corporations or partnerships.

Paying large year-end bonuses to owners in order to pay in needed withholding taxes is no longer advisable and will result in higher income taxes on the same income. Rather, pay in estimated taxes for the owner on a quarterly basis.



# 8300 Reporting

- The amount of cash is **more than** \$10,000
- The business receives the cash as:
  - One lump sum of more than \$10,000
  - Installment payments that cause the total cash received within one year of the initial payment to total more than \$10,000.
- The establishment receives the cash in the ordinary course of a trade or business
- The same agent or buyer provides the cash
- The business receives the cash in a single transaction or a series of related transactions



# Where to File Form 8300



Beginning January 1, 2024, businesses that file 10 or more information returns must e-file [Form 8300](#), instead of filing a paper return. For those with fewer information returns, e-filing Form 8300 is still optional.

To file electronically Form 8300, a business must set up an account with the Financial Crimes Enforcement Network's [BSA E-Filing System](#). The IRS will enhance the privacy and security of all taxpayer data.

<https://bsaefiling.fincen.treas.gov/main.html>



Businesses not required to e-file can mail the Form 8300 to the IRS at:  
IRS Detroit Computing Center  
P.O. Box 32621  
Detroit, MI 48232





# Where to File Form 8300

Link to file

<https://bsaefiling.fincen.treas.gov/main.html>

**BSA E-Filing System**  
Financial Crimes Enforcement Network

2

HOME ABOUT RESOURCES NEWSROOM FILE FBAR ENROLL HELP

UPDATE: New User Interface for Registered BSA E-Filers

**About BSA E-Filing**

The BSA E-Filing System supports electronic filing of Bank Secrecy Act (BSA) forms (either individually or in batches) through a FinCEN secure network. BSA E-Filing provides a faster, more convenient, more secure, and more cost-effective method for submitting BSA forms. [Learn more about BSA E-Filing here.](#)

**News**

- Sep 14 2023 [FinCEN Extends FBAR Deadline for Victims of R...](#)
- Jun 23 2023 [2023 FinCEN E-Filing Survey](#)
- Dec 09 2022 [FinCEN Further Extends FBAR Deadline for Cert...](#)
- Oct 06 2022 [FinCEN Provides FBAR Relief to Victims of Rec...](#)
- Aug 30 2022 [Production SDTM Server IP Change](#)

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**File FBAR Now**  
Filing the FBAR as an Individual? Access and Submit the FinCEN Report 114 FBAR for Individuals

**Login**  
Existing Filer? Login to file BSA forms on behalf of your institution (or client)

**Support Center**  
Have a question or issue? Access the support center portal now

**New Filer Enrollment**  
New to BSA E-Filing? Enroll to file BSA forms on behalf of an institution (or client)



# Form 8300 (required written statement for customers)

The law requires the business to provide a written statement to each person(s) named on Form 8300 to notify them that the business has filed the form **on or before January 31** of the year that immediately follows the year the customer made the cash payment. We highly recommend not filing them before January of the following year.

- The statement must include the following information:
- The name and address of the cash recipient's business
- Name and telephone number of a contact person for the business. IRS can fine you if this information is not in the statement
- The total amount of reportable cash received in a 12-month period
- A statement that the cash recipient is reporting the information to the IRS



# Sample Letter

[DEALERSHIP LETTERHEAD]

[Date]

Dear Customer:

We are required by the Internal Revenue Service (IRS) to report all transactions involving payments of more than \$10,000 in cash (26 USC6060(I)).

We filed Form 8300 with the IRS on (date) 2020, indicating that you paid us [\$ amount] in connection with your purchase of a [year, make, model, VIN].

Sincerely,

[Dealership Name]

[Dealership Contact Person Name]

[Dealership Address]

[Dealership Telephone Number]



# Bonus Depreciation

IRC §168(k) allows taxpayers additional depreciation for assets placed in service in a given tax year

Percentage of additional depreciation phasing down:

2022 – 100%

2023 – 80%

2024 – 60%

2025 – 40%

2026 – 20%

2027 – 0%



# Bonus Depreciation (cont.)

In order to claim additional depreciation under §168(k), dealerships must not be subject to §163(j) interest limitation:

- Amount of interest (including gross floorplan prior to netting with any manufacturer credits) cannot exceed 30% of the sum of:
  - Taxable income
  - Gross interest expense

Prior to 2022, the law allowed for an additional add back for depreciation in the above calculation.

Can still claim additional depreciation under §179, but subject to taxable income floor, and individual caps.



# De Minimis Safe Harbor Election

## Expensing of fixed assets



Under the IRS tangible property rules issued in 2014, certain amounts paid for machinery, furniture or equipment can be expensed directly rather than capitalizing them in fixed asset accounts.



For 2023 you can directly expense amounts paid up to \$2,500 per item or invoice (\$5,000 if you have a certified financial statement).



Discuss with management whether to expense as incurred or wait until year-end.



# Cost Segregation Studies

**Significant tax savings are achieved by having a cost segregation study performed on new construction and renovations enabling faster depreciation of building and improvements.**

**Disposition Study and Cost Segregation** – After construction or initial acquisition of dealership property, subsequent improvements could result in the immediate expensing of portions of the building that were removed or replaced. If certain building components have been removed why continue to depreciate them?

Improvements made to the interior of the dealership are considered qualified leasehold improvements. And may qualify for both bonus depreciation and Section 179 expensing.

Under the new interest regulations, bonus depreciation may not be allowed on the dealership, so reporting the improvements on the property owner's return may provide a better result.



# Misclassification of Employees

Misclassification occurs if an employer treats people as independent contractors when they are employees. This tactic is used to avoid compliance with:

- Unemployment insurance (UI)
- Workers' Compensation
- Social Security
- Withholding tax
- Temporary disability
- Minimum wage and overtime laws that protect workers

When you pay an employee as an independent contractor, it may be considered fraud. It puts the employer at tremendous risk of penalties, fines and criminal prosecution.





# Implications of Misclassifying Workers



## Worker's Compensation

If a misclassified independent contractor is injured on the job and files a claim for workers' compensation, the employer may be subject to workers' compensation claims, civil tort actions, fines and criminal convictions and the employer's liability insurance will not cover any claim or lawsuit if it is determined that the injured individual is actually an "employee."



## State Unemployment Insurance

The Employer must pay the amount that they should have contributed and are also assessed interest for each month that they are in default. In addition, organizations that are found to have willfully misclassified their employees to avoid paying unemployment benefits may be found guilty of a misdemeanor.

# Third Party Sick Pay

- Includes both short-term and long-term disability payments.
- Amounts received by employees may not be fully taxable. **NY employers can elect to withhold up to 60 cents a week from employee's pay to offset the cost of disability insurance.** This withholding is considered to be employee contributions.
- The non-taxable portion is determined by taking the employee contributions divided by the cost of the policy for that employee and multiplying it by the amount of disability payments received.
- Insurance companies are required to withhold social security and Medicare taxes on the taxable portion of disability payments. Employers must notify the insurance company of the taxable percentages. This should be reviewed each year. Employers must include the reportable amount and adjust Form 941 for any taxes withheld by the insurance company.
- Sick pay is reported on Form W-2, Box 12, Code J, with Box 13 "Third Party Sick Pay" checked.



# Form 1099-NEC

- Form 1099-NEC replaced Form 1099-MISC, Box 7 for non-employee compensation only
- Review all payments made to individuals who are not your employees and unincorporated entities during the year and determine those to whom \$600 or more was paid for services rendered to your dealership. Do not include payments for purchases of tangible property. Form 1099-NEC must be issued to entities that are LLC's as well as LLP's and sole proprietorships, but not to corporations (Inc., Corp., or Ltd.)
- Examples of payments requiring 1099-NEC filings:
  - Independent contractors
  - Landscapers
  - Cleaning and repair companies
  - CPA's
  - Attorneys (even if incorporated)
  - Physical Inventory companies
- Form 1099-NEC must be filed by January 31, 2024.



# Withholding on Supplemental Wages

- Supplemental wages include bonuses and commissions.
- Withholding taxes on supplemental wages can only be determined by using one of two methods:
  - An option flat rate of 22% Federal and 9.62% NY State or
  - Adding supplemental wages to regular wages paid for the period and calculating the taxes based on the W-4 submitted by the employee.
- The law does not allow for employees to selectively block or change withholding rates on commissions or bonuses. Any changes to an employee's withholding must be done by providing the employer with a new W-4 form and/or IT-2104 form.



# FUTA Credit Reduction for 2023

If California, Connecticut, and New York continue to have outstanding Title XII advances as of November 10, 2023, the jurisdictions will be subject to another 0.30% increase in the FUTA tax rate, from 0.90% in 2022 to 1.20% in 2023.

When filing Form 940, you calculate the additional tax due on Schedule A.



# Successor Employer

Carryover of  
social security  
wage base and  
unemployment  
wage base

If you acquire a business, wages paid by the predecessor (selling) employer are treated as if paid by the successor (buying) employer for purposes of applying the social security wage base, the threshold for the additional 0.9% Medicare tax withholding and the Federal and NY State unemployment wage bases.

You must notify your payroll vendor to carry over the information from the prior employer for social security wages and for unemployment taxable wages.

Will result in significant tax savings for both employer and employee. Can be tens of thousands of dollars depending on which quarter the sale takes place.



# Miscellaneous Considerations

**Demonstrator vehicles** – Follow the rules for the reporting of the value of personal use for sales and non-salespersons on Form W-2.

**Employee bonuses** accrued at year-end must be paid by March 15 of the following year. Bonuses to owners must be paid by 12/31/23 to deduct them in 2023.

**Metropolitan Commuter Transportation Mobility Tax (MCTMT)** – review year-end payroll reports and reconcile the wages subject to the MCTMT. The MCTMT wages should be equal to the Medicare wages. ALL NY employees in your dealership are subject to the tax regardless of where they reside.

The rate increased from 0.34% to 0.47% from July 1, 2023 to December 31, 2023 and increased to 0.60% on January 1, 2024 **for New York City businesses only**. All other counties in the MCTMT district stays at 0.34%.



# Miscellaneous Considerations

**Maximum 401(k) deferral** is \$23,000 for 2024, \$30,500 for those aged 50 and over.

**401(k) contributions withheld** – it is important to remember that all 401(k) contributions and loan repayments withheld from employees must be paid into the plan on or shortly after the payroll issued date.

**Rents paid to related cash basis parties** must be paid by December 31<sup>st</sup> to deduct the expense in 2023.





*Thank you.*

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