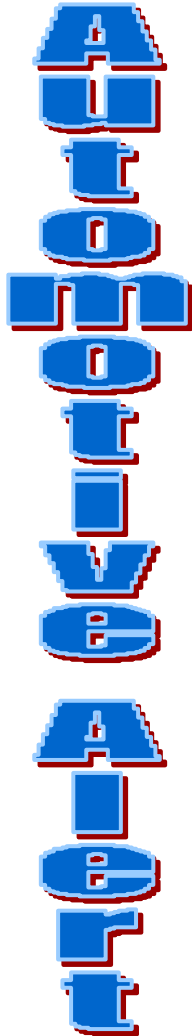




IRS

CONSUMER ASSISTANCE TO RECYCLE AND SAVE (CARS) ACT OF 2009

TAXABILITY OF PAYMENTS TO DEALERSHIPS



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Introduction

On June 24, 2009, the President signed into law the Consumer Assistance to Recycle and Save Act of 2009 (the CARS Act). On July 23, 2009, the Acting Deputy Administrator of the National Highway Traffic Safety Administration (NHTSA) issued rules for the Car Allowance Rebate System (CARS Program).

The CARS Program is a voluntary vehicle trade-in and purchase program. The program helps consumers pay for a new, more fuel efficient car or truck from a participating dealer when they trade in a less fuel efficient car or truck. Consumers may receive credits of \$3500-\$4500 depending upon how the trade-in and acquired vehicles fit within the program criteria. Generally, the trade-in vehicle must have an EPA combined fuel economy below a specified value and the new vehicle must have an EPA combined fuel economy above a higher specified value.

The Rules provide a process for dealerships to register to participate in the CARS Program and establish criteria for consumers wishing to participate in the program. The program covers qualifying transactions that occur between July 1, 2009 and November 1, 2009, so long as allocated funds remain. If the dealership meets all of the program requirements, including transferring the trade-in vehicle to a disposal facility to be crushed or otherwise disposed of, NHTSA will electronically transfer the appropriate credit amount to the dealership. Dealers must apply the credit amount (in addition to any other rebate or discount) to the customer's price of the purchased or leased vehicle.

Discussion

The CARS Act specifically states that the credit is not income to the purchaser. The Act does not address the taxability of the credit amount to the dealership or the deductibility of any expenses incurred by the dealership in participating in the program.

Gross income generally means all income from whatever source derived unless specifically excluded by law. Additionally, gross income includes income realized in any form, whether in money, property, or services. Gross income derived from a business means the total sales, less the cost of goods sold. Internal Revenue Code § 61; Treas. Reg. § 1.61-3.

In a typical dealership transaction, a customer may pay for the vehicle in cash, finance the full vehicle price, or finance something less than the full selling price after the application of a cash down payment or a trade-in vehicle allowance. A dealership's gross receipts include the full selling price of the vehicle, regardless of the form of the customer's payment. In addition, to the extent the dealership receives any scrap value for the customer's trade-in, that scrap amount is includible in the dealership's income.

The credit and ultimate payment by NHTSA to the dealership under the CARS Program is includible in the dealership's gross receipts from the sale of the vehicle. The dealership must include this income in the year the vehicle is sold.

The dealership is allowed to offset gross income by the cost of goods sold. If the dealership incurs any ordinary and necessary expenses in disposing of the trade-in vehicle an additional deduction may be allowable.

Dealers should be careful to maintain proper records of the CARS transactions including the gross receipts from the sale of the new vehicle, the CARS payment amount, and any expenses incurred to dispose of the traded-in vehicle.