

[BIR REVENUE MEMORANDUM CIRCULAR NO. 35-91, April 01, 1991]

GUIDELINES FOR THE IMPLEMENTATION OF REVENUE REGULATIONS NO. 8-90, AS AMENDED BY REVENUE REGULATIONS NO. 2-91, PERTAINING TO THE WITHHOLDING OF TAX ON INCOME PAYMENTS FROM THE SALE, EXCHANGE OR TRANSFER OF MOTOR VEHICLES

Revenue Regulations 8-90 requires the withholding of a creditable income tax of 2% on the gross selling price of total amount of consideration or its equivalent paid or payable to the seller/owner for the sale, exchange or transfer of motor vehicles prior to its registration by the Land Transportation Office (LTO). The tax rate was reduced to 1% under Revenue Regulations No. 2-91 for sales, exchanges or transfers of motor vehicles that are considered as "brand new."

This Circular setting forth the guidelines to be followed in the enforcement of Revenue Regulations Nos. 8-90 and 2-91 is hereby prescribed in order to have a uniform and consistent application of the rules.

**1
Coverage**

All sales, exchanges or transfers of motor vehicles, whether brand new or second hand, including transactions between two individuals not engaged in trade or business, on or after June 1, 1991, shall be subject to the creditable withholding tax, except the following:

- a. Motor vehicle sold, exchanged or transferred for P50,000 or less, which is of 1978 or earlier model. Both conditions must be satisfied to be exempt from withholding tax.
- b. Motorcycles and similar vehicles
- c. Motor vehicles sold by manufacturers who participate in the Car Development Program (CDP) or Commercial Vehicle Development Program (CVDP) to their franchised dealers. But when such vehicle is sold to a person other than its franchised dealer, the same shall be subject to the creditable withholding tax.

Illustrations:

- a. "A" purchased a car in 1988; he sold it to "B" in 1989; "B" sold it to "C" in 1990; "C" sold it to "D" in March, 1991; and "D" sold it to "E" on June 15, 1991. No registration of the vehicle was made in all the above transactions except the last one. Only the sale of the car by D to E is subject to the creditable withholding tax, since the regulations become effective only on June

1, 1991. If the series of transactions happened after June 1, 1991, each and every sale or transfer of motor vehicle shall be subject to the withholding tax.

- b. "A" purchased engine, chassis, body and other parts from car dealers and have them assembled by "B" for a fee. To register the vehicle with the LTO, he executes an Affidavit of Assembly and submits copy of the Contract to Assemble and invoices covering purchases of engine, chassis, body and other parts in the name of the owner. In this case, no withholding tax shall accrue because there is no sale of motor vehicle. However, if the above assembler/contractor supplies all the materials and labor, there is a sale of motor vehicle, which sale is subject to the 2% creditable withholding tax.
- c. "A" bought a new car as a gift to his son, "B". This donation is not subject to the creditable withholding tax, Although it is subject to donor's tax.
- d. "A" exchanges his car with "Bs" jeepney in June, 1991. In this case, there are two taxable transactions; both are subject to creditable withholding tax. Basis is the fair market value at the time of the exchange.
- e. "A" won in a public auction sale of motor vehicles conducted by the Bureau of Customs. Such sale is not subject to the withholding tax because the Bureau of Customs is a government agency exempt from income tax. However, foreclosure sales of motor vehicles shall be subject to the creditable withholding tax.

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Withholding Tax Rates

Sales, exchanges or transfer of motor vehicles that are considered as "brand new" by persons participating in the government CDP or CVDP shall be entitled to the preferential rate of 1%. Thus, sales, exchanges, or transfers of motor vehicles assembled by a person who is not a participant to either of the above program shall be subject to the 2% creditable withholding tax. Sale of repossessed motor vehicles by franchised dealers shall be considered as sale of "second hand vehicles" and therefore subject to 2% of the gross selling price.

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Tax Base

The 1% or 2% withholding tax shall be based on the gross selling price; i.e., without deducting discounts or price adjustments, or the total amount of consideration or its equivalent. The value added tax (whether indicated as a separate item in the VAT invoice or not) passed on by the seller to the buyer shall not form part of the tax base.

The gross selling price shall be the consideration so stated in the sales documents or the official Schedule of Values of Motor Vehicles, whichever is higher. In an exchange, the fair market value of the vehicles at the time of the exchange shall be used.