



Vehicle advertised prices still a concern to Better Business Bureau

By **PATRICIA KELLY**

GENERAL COUNSEL, BBB OF CHICAGO AND NORTHERN ILLINOIS

In accordance with the BBB/CATA Ad Review Program, the Better Business Bureau wants to bring to dealers' attention the continuing problem of advertising prices that are not available to all buyers.

It is imperative to understand that advertised prices cannot include any limited rebates or other amounts resulting in a price that is not available to all buyers. Most dealers are very aware that advertised prices cannot include limited rebates or other amounts resulting in a price that is not available to all buyers.

Rule 475.310 states, in the last sentence of the rule, "Purchasers shall be able to purchase all vehicles described

by the advertisement at the advertised price."

Rule 475.530 states, in part (b): "It is an unfair or deceptive act for any dealer to advertise a price or amount of any installment payment, wherein rebates have been deducted, unless every consumer seeking to purchase or lease the advertised vehicle is eligible for the rebate."

Dealers continue to be frustrated by their counterparts who refuse to comply with these rules. The result is an unfair marketplace for dealers and a deception for consumers who think they can obtain advertised prices. The BBB continues to write letters to offending dealers and to refer these dealers to the Attorney General under the zero-tolerance policy.

We send a strong message to the same dealers when they question such a referral, even when the issue is a result of simple inattention to website content, because the action still results in an unfair marketplace.

The BBB has stepped up our efforts to make certain that all dealers are in compliance.

Dealer websites, usually created by third-party agencies or by the manufacturer, often show prices that are not in compliance with the rules.

Therefore, it is imperative that dealers monitor their website pricing and other pricing to ensure advertised prices are offered in compliance with the rules, regardless of who prepares the website content. Ultimately, the dealers are re-

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2019 documentary fee maximum announcement expected Dec. 12

The maximum documentary service fee that may be charged in Illinois in 2019 is expected to be announced by the state's attorney general's office Dec. 12. The CATA will issue special notice following any announcement.

The increase is tied to the federal Consumer Price Index for the 12-month period ending Nov. 30. Later this month, the CATA will mail to dealers two copies of a poster regarding the 2019 DOC fee that they can post in their dealerships.

2018 year-end holiday, pay issues

Franczek Radelet P.C., the CATA's labor relations counsel, has summarized the upcoming holiday and holiday pay issues in the collective bargaining agreements with Mechanics Local 701 and Teamsters Local 731 Garage Attendants.

MECHANICS LOCAL 701

Recognized Holidays

- Day before Christmas: Monday, Dec. 24
- Christmas Day: Tuesday, Dec. 25
- New Year's Day: Tuesday, Jan. 1, 2019

Substitute Another Day in Lieu of Day Before Christ-

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By **MICHAEL SILVER**

CERTIFIED PUBLIC ACCOUNTANTS, CATA MEMBER

2018 year-end

As another tax year comes to a close, it is time to consider your tax-planning opportunities. The tax law passed last December (Tax Cuts and Jobs Act of 2017) could have a major impact on your business and personal income tax returns.

Year-End Planning

1. The C Corporation tax rate has been reduced to 21 percent. The tax rate for dividends paid from a corporation are taxed at the same rate as prior years, which includes the qualified dividend rate of 15/20 percent plus the net investment income tax rate of 3.8 percent.

2. Taxpayers who own and operate their business as a pass-through entity such as partnerships and S Corporations are entitled to a deduction of up to 20 percent of their qualified business income (QBI). If taxable income exceeds \$315,000 for a married couple filing jointly, or \$157,500 for all other taxpayers, the deduction calculation is limited to the lesser of 20 percent QBI or the greater of 50 percent of wages, or 25 percent of wages plus 2.5 percent of the unadjusted basis of qualified property. Taxpayers can elect to aggregate and group similar entities in order to maximize the deduction.

3. Dealers with average gross receipts of more than \$25 million no longer will be allowed to use bonus depreciation. This was a trade-off in the TCJA for dealers to not be subject to the new 30 percent interest expense limit. Dealers still can take advantage of Section 179 expensing. For 2018, the Section 179 expensing limit is \$1 million and the investment ceiling limit is \$2.5 million. Expensing generally is available for most depreciable property (other than buildings), and off-the-shelf computer software. Expensing is available for qualified improvement property (generally, any interior improvement to a building's interior, but not for enlargement of a building; elevators or escalators; or the internal structural framework), for roofs, and for HVAC, fire protection, alarm, and security systems. Consider placing eligible assets into service before the end of 2018 to take advantage of this expensing limit.

4. Beginning in 2018, deduction of business losses cannot exceed the excess business loss (EBL) limit. An EBL exists if the aggregate losses and deductions from a taxpayer's trades or businesses exceed the sum of:

- aggregate gross receipts from such trades or business
- \$500,000 for married filing joint taxpayers or \$250,000 for other taxpayers

Consider planning year-end revenue and expenses to avoid being subject to this limit.

5. Starting in 2018, many taxpayers who claimed itemized deductions in past years no longer will be able to do so. The basic standard deduction has been increased (to \$24,000 for joint filers, \$12,000 for singles), and many itemized deductions have been cut back or abolished. Not more than \$10,000 of state and local taxes may be deducted; miscellaneous item-

ized deductions (e.g., investment advisory and tax preparation fees) no longer are deductible. Deductible expenses include medical expenses to the extent that they exceed 7.5 percent of your adjusted gross income, state and local taxes up to \$10,000, your charitable contributions, plus interest deductions on a restricted amount of qualifying residence debt. But payments of those items won't save taxes if they don't cumulatively exceed the new, higher standard deduction.

- To maximize your itemized deductions, consider applying a "bunching strategy" to pull or push discretionary medical expenses and charitable contributions into the year where they will be maximized. For example, if a taxpayer knows he or she will be able to itemize deductions this year but not next year, the taxpayer may be able to make two years' worth of charitable contributions this year, instead of spreading out donations over 2018 and 2019.

- Consider using a credit card to pay deductible expenses before the end of the year. Doing so will increase your deductions for that year even if you don't pay your credit card bill until 2019.

6. Confirm you have made all required personal and corporate income tax deposits for 2018, and see that your personal income tax withholding is adequate.

7. Consider maximizing your retirement contributions, which is \$55,000 for defined contribution plans. The \$55,000 limit includes your employee elected deferrals (\$18,500 for 2018). An additional \$6,000 catch up deferral is allowed for age 50 or over.

8. If you or the dealership owns stock that has unrealized losses, consider discussing with your tax or investment professional the benefit of selling them by year-end to offset realized gains recognized earlier in the year.

9. Confirm you have substantiation for your 2018 meal and travel expenses. Travel expenses continue to be 100 percent deductible. Meals including those provided to employees are 50 percent deductible. Entertainment expenses no longer are deductible.

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Review past editions dating to 1998 or search by subject at www.cata.info/publication/bulletins.

David E. Sloan
Erik K. Higgins

President, Publisher
Editor, Director of Dealer Affairs

checklist for dealers

10. Accrued interest on loans from shareholders and other related parties, as well as rents, must be paid in order for the dealership to deduct these amounts in the current year.

Keep the Accounting Records Open at the End of December

1. Record December finance chargebacks in December.
2. Maximize LIFO deductions. Record all new vehicles that were built and invoiced in 2018 as vehicle purchases in 2018 by keeping the new-vehicle purchase journal open the first few days of 2019.
3. Keep your accounts payable journal open to record all 2018 expenses in 2018, including advertising, interest, utilities, telephone, gasoline, data processing, insurance, etc.
4. Adjust your property tax payable account to equal at least the total that you actually paid in 2018.
5. If any vehicle deal is not a 100 percent completed deal in 2018 (all paperwork and funding in 2018), then treat it as a 2019 vehicle sale.
6. Make sure all miscellaneous inventories are adjusted to actual, including labor inventory, sublet, gas-oil-grease, body shop materials, etc.
7. Distributions paid to S corporation shareholders should be equalized in accordance to their ownership percentage before year-end.
8. You must include a reasonable estimate of your LIFO adjustment for the year on all versions of your December financial statements. **There are no exceptions.** If there is not a separate LIFO cost of sales account, charge the LIFO estimate to cost of sales in a cost account that has no other activity.
9. Compare your actual parts inventory to the accounting parts inventory and make adjustments where appropriate. Have your parts manager determine which parts should be considered worthless. Subject to your review, dispose of the parts by year-end.
10. All wages and commissions paid in 2019 for 2018 services should be accrued in 2018. Make sure the first payroll in 2019 (even though some portion of the payroll was for 2018 services) is not included on your W-2s for 2018, but instead will be on the W-2s for 2019.
 - a. All accrued payroll for non-shareholders must be paid no later than March 15, 2019 for it to be deductible in 2018.
 - b. If you are a C corporation, make sure you pay any salaries, commissions, or bonuses to stockholders and related parties in December (if their ownership exceeds 50 percent including related party interests) in order to take a 2018 tax deduction.
 - c. If you are an S corporation, wages to a shareholder cannot be accrued and deducted for tax purposes. You must

pay them in 2018 and include the wages on the 2018 W-2.

11. Reconcile, where possible, all balance sheet accounts before closing the year.

Additional Year-End TO DOs

1. If you are not on LIFO for used vehicles, adjust all of your used vehicles to current wholesale market value at year-end. On an annual basis, used-vehicle LIFO should be discussed with your tax advisor.
 2. Businesses should consider the “de minimis safe harbor election” to expense the costs of lower value capital assets, materials, and supplies. Regulations allow businesses to write off small asset purchases. The safe harbor amount that can be written off is up to \$5,000 per item or invoice if you have an audited financial statement and \$2,500 if you do not. However, you can set a write-off policy at any level that is material to you. In light of the qualified business income deduction (QBI), you may want to reevaluate the election.
 3. Review all past due accounts receivables, including employee receivables. Write off those receivables that are not collectible.
 4. Review prepaid assets and expense all items in this account that are not valid as prepaid at year-end.
 5. All payroll-tax and sales-tax payable accounts must equal the actual amount of the applicable taxes paid in 2019 for the 2018 fourth quarter and year-end filings. Investigate variances. The year-end payroll tax accrual can include only taxes owed on wages actually paid in 2018.
 6. Compute the Dec. 31, 2018, accrued vacation wages payable and adjust the books accordingly. Accrued vacation wages paid Jan. 1-March 15, 2019, are deductible in 2018 for tax purposes. No vacation accrual is allowed for any shareholders.
 7. Review bank reconciliations for checks (including payroll checks over 60 days old) not expected to clear. These checks should be voided and reissued. Funds owed to payees who cannot be located may be considered unclaimed property, which would require you to remit the funds to the appropriate state agency. Before reissuing a check to a vendor, be sure that it has not been paid with a subsequent billing.
- ### Year-End Tax Reporting
1. IRS Form 1099-MISC must be issued to all businesses that are not incorporated (including LLCs) and received \$600 or more during 2018 for payment of services, awards, commissions, or fees for services. A Form 1099-MISC must be issued for payments to attorneys even if they are incorporated. When preparing the 1099, for those vendors from whom you purchased parts in conjunction with a service, you must report the total payment made to them on the 1099. Also, Form 1099-MISC must be issued for all rents paid to non-corporate taxpayers, including shareholders, and Form 1099-INT must be issued for interest paid to shareholders
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Prices

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 sponsible for their advertised prices.

The BBB has received many recent referrals from dealers because the advertised price is available only for those consumers who finance or lease through a manufacturer program. Such advertised prices violate both rules cited above. There seems to be some confusion that, because the financing or lease is related to the manufacturer, a price that is based on the financing or lease can be advertised, and that is not correct.

The price is like any other price that includes limited rebates; it is not available to all consumers.

The BBB strongly advises dealers and their marketing/advertising agencies to closely monitor this issue as they are planning their advertising campaigns, to avoid advertising prices that are based on manufacturer price financing.

As you may know, the Better Business Bureau/CATA Advertising Program was created in 1996 to maintain a self-regulatory program which levels the playing field for automobile advertisers while providing the public with the reassurance that the automobile advertising is truthful. The BBB acts as sort of a buffer between dealers and the Illinois attorney general's office, although that office has complete and independent authority to handle all matters as it sees fit in light of enforcement priorities and resources.

Congratulations!

Marcin Cybulak, Brian Guzy, and Ammar Khan, all of **Motor Werks of Barrington**; and Sabina Krzyzak, of **Mercedes-Benz of Hoffman Estates**, are November 2018 graduates of the NADA Academy.

Tom Kastrati, of **D'Arcy Buick-GMC**, in Joliet; and John "Jack" Myers, of **Team Honda**, in Merrillville, Ind., are September 2018 graduates of the NADA Academy. Myers was the class president.

Holidays

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A dealership and its employees may agree to substitute another day and choose to work on the Day before Christmas Day. This is a voluntary decision for each employee. Holiday overtime premiums are not applicable to any hours worked on the Day before Christmas Day.

Eligibility for Holiday Pay

Unless excused by the employer, employees must work their regularly scheduled day immediately before and after a holiday in order to receive holiday pay. Probationary employees are not eligible for holiday pay within the first 60 calendar days of their employment.

Amount of Holiday Pay

Holiday pay for Journeymen Technicians is eight hours times the JT hourly rate noted in Appendix 1 of the Standard Automotive Agreement. Other Technicians receive eight hours times their applicable hourly pay rate. Employees who are employed on a four-day, 10-hour workday schedule receive 10 hours of pay.

Holiday Falling Within a Vacation or on a Scheduled Day Off

Employees on vacation or where the holiday falls outside their regular work week (e.g., Day Before Christmas for an employee on a Tuesday through Saturday work schedule) may choose between an extra day's pay or an extra day off with pay. This choice must be communicated by the employee to the employer at least three days before the holiday.

TEAMSTERS LOCAL 731

Recognized Holidays

- Day before Christmas: Monday, Dec. 24*
- Christmas Day: Tuesday, Dec. 25
- New Year's Day: Tuesday, Jan. 1, 2019

* Dealerships can substitute another day in lieu of treating the Day before Christmas as a holiday. In that case, holiday pay will not be applicable if employees work on the Day before Christmas.

Eligibility for Holiday Pay

Employees who have passed their probationary period and regularly work a full workweek are eligible to receive holiday pay if they work their regularly scheduled full day immediately before and after the holiday. If these conditions are satisfied, employees must be paid even if the holiday falls outside of their regular workweek, e.g., Day before Christmas for an employee on a Tuesday through Saturday work schedule.

Amount of Holiday Pay

Holiday pay is the number of straight-time hours the employee normally works in one full day times the employee's standard hourly rate. Accordingly, employees who regularly work eight-hour days should receive eight hours of pay.

Dealers with additional questions should contact Terry Creamer at (312) 786-6157 or tc@franczek.com, Chris Johlie at (312) 786-6152 or caj@franczek.com, or Dave Radelet at (312) 786-6190 or dpr@franczek.com.

Regulation Z, M exemption thresholds to increase Jan. 1

The dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) that determine exempt consumer credit and lease transactions increases from \$55,800 to \$57,200 effective Jan. 1.

The thresholds are adjusted annually based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) as of June 1 each year.

Checklist

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and any other individuals. The deadline for filing 1099s is Jan. 31, 2019, for both paper and electronically filed Box 7 non-employee compensation. All other 1099s are due Feb. 28, 2019, if paper filed, and April 1, 2019, if electronically filed.

2. W-2s for S corporation shareholders must include in wages health insurance premiums paid by the corporation. This amount is not subject to social security or Medicare tax. If the dealership pays the insurance premiums on behalf of the shareholders' children who are employees of the dealership, the children's W-2 must include the insurance premiums.

3. Under the Affordable Care Act, if you have 50 or more full-time or full-time-equivalent employees, you are considered an Applicable Large Employer. ALEs are required to complete Form 1095-C, the Employer-Provided Health Insurance Offer and Coverage for all full-time employees. This form details by month the employer health insurance offered to individual employees. The deadline for providing the forms to employees is Jan. 31, 2019. Paper filed forms are due Feb. 28, 2019, and electronic forms are due April 1, 2019. There are extensions available, if requested.

4. Determine if you are receiving services from individuals who should be considered employees. The IRS provides a voluntary program that will allow you to convert these individuals prospectively from independent contractors to employees with partial relief from penalties and interest including protection from prior year audits of the converted class of workers. Consult your tax advisor for details.

Review procedures for the use of demonstrators to ensure you comply with the current IRS regulations

1. All individuals who are provided a demo to drive should sign a written demonstrator agreement.

2. There are two IRS-approved methods that can be used for full-time salespersons. The first method provides them with tax-free use of the demo. This method is fairly complicated and restrictive. The second method, used by most dealers, is the partial exclusion method. Under this method, an amount is added to wages on a monthly basis. The IRS has provided daily income amounts based on the value of the vehicle. For example, for a vehicle valued at \$40,000, the

daily inclusion is \$9. Under this method, employees are not required to maintain logs.

3. For employees who are not full-time salespersons and any other individuals who drive demos, the annual lease value method is used. The amount included in income is based on personal-use mileage and the IRS annual lease value table. The IRS requires that logs be maintained in order to verify business versus personal use of the vehicle.

4. The amount included in income is to be added to each employee's W-2. Non-employee family member income amounts also must be included in the employee's W-2. This income is subject to Social Security and Medicare taxes. Shareholders not on the payroll and any other non-employees must be issued a Form 1099-MISC for the income.

5. You can obtain more information about the personal use of autos including sample demonstrator agreements by requesting our Dealer Demonstrator Guidelines.

Other

1. Form 8300 must be filed if you receive cash in excess of \$10,000 from a customer. This includes cashier checks, money orders, and traveler's checks except those issued by financial institutions requiring a lien on the vehicle.

2. If the dealership has a Section 125 plan (cafeteria plan), make sure eligible employees complete the 2019 election forms before the first 2019 payroll. Remember that stockholders owning more than 2 percent in S corporations (LLCs, etc.) are not eligible to participate.

3. If you offer a health care Flexible Spending Arrangement (FSA) as part of your cafeteria plan, in order for it to be a qualified benefit under a cafeteria plan, the maximum salary reduction contribution to the health care FSA for 2019 is limited to \$2,700. Stockholders owning more than 2 percent in an S corporation or an LLC are not eligible to participate.

If your company offers a qualified high deductible health insurance plan, you and employees might be able to contribute to individual Health Savings Accounts (HSAs). Contribution limits for 2019 are \$3,500 for an individual and \$7,000 for a family with a \$1,000 additional contribution for those who are age 55 and over.

4. If you make gifts to individuals each year for estate tax purposes, the payments must be made by year-end. You also may be required to file a gift tax return depending on the size of the gift — please consult your tax advisors on further guidance on this.