Some dealer cash taxable in Illinois; changes to Interim Use, drive-aways

Illinois dealers must report taxable dealer incentives on Section 6, Line 1 of Form ST-556 as part of the sale of the vehicle reported on that return, one of several Illinois Revenue Department changes that took effect July 1.

The changes, which the department filed June 30, also affect the Interim Use exemption and the exemption for vehicles for which a drive-away permit is issued.

The provision to tax manufacturer incentive payments follows nearly two years of talks with the CATA and the Illinois Automobile Dealers Association about factory-to-dealer cash. The negotiations shielded stair-step payments and other incentives from taxation, and made any new tax prospective only, not retroactive for three years, which the department considered.

“Negotiations with the revenue department eliminated most dealer cash programs from the proposal. This is a major victory achieved by the CATA and the IADA on behalf of their members,” said CATA Chairman John Phelan. “In our estimation, we salvaged probably 90 percent of the potential transactions subject to tax.”

Numerous revenue department audits on CATA members were conducted this year, and all of those audits was held open until this matter was resolved.

• The new regulations depict six distinct types of transactions:
  1. Taxable incentive payments [payment conditioned on the retail sale]: An automobile manufacturer offers a dealer incentive (sometimes referred to as “dealer cash”) of $1,000 for each of a specific type of vehicle sold to a retail customer during March. A dealer sells that type of vehicle to a retail customer for $38,000 during March. The retail sale of that vehicle qualifies the dealer for the manufacturer’s dealer incentive payment of $1,000. The purchaser pays the dealer $38,000 and the dealer receives $1,000 from the manufacturer. Since the $1,000 payment is conditioned only upon the sale of that vehicle and is not conditioned upon the sale of any other vehicle or vehicles, the taxable gross receipts received by the dealer for

Countdown: Red Flags Rule mandatory compliance arrives Nov. 1

Compliance with the Federal Trade Commission’s new Red Flag Rule is mandatory beginning Nov. 1. But the “Rule” actually took effect Jan. 1, and dealerships that do not have an Identity Theft Prevention Program today can be found by the courts to exhibit “willful indifference” to the Rule, speakers said at a June seminar about the new regulation.

“You are liable right now, today,” said Russ Radant of Automotive Compliance Consultants, an allied member company of the CATA that presented the seminar.

The Rule, which is mandated by the Fair and Accurate Credit Transactions Act of 2003, requires financial institutions or creditors—including dealerships—that engage in financing activities to establish an ID theft prevention program concerning all consumer accounts. Business accounts are covered by the Rule if there is a reasonably foreseeable risk to the business customer or to the dealership of ID theft.

Full details about the 256-page Rule are on the FTC’s Web site, www.ftc.gov. All programs must have six distinct elements:

Policy A formal, written program that is signed by the officer of the corporation;

Training for employees—hands-on and continuous;

Detection and Prevention during transaction processing;

Mitigation measures to reduce fraud and minimize any impact on customers; and

Audit of the program at least annually.

A written program must include reasonable policies and procedures to identify and detect 26 Red Flags noted by the FTC, and respond
Dealer cash

Continued from Page 1

this sale are $39,000.

2. Nontaxable incentive payments [payment conditioned on the retail sale, but only after a certain number of sales have been made]: A manufacturer offers a dealer incentive payment (sometimes referred to as “dealer cash”) of $1,000 for each of a specific type of automobile sold to a retail customer in March, but only if the dealer sells at least 15 of those types of vehicles during that month. A dealer sells that type of vehicle to retail customer for $38,000 on March 25. The dealer had sold 14 of those types of cars earlier that month, and the March 25 sale qualified the dealer for the $1,000 manufacturer payment on that sale and each of the 14 previous sales. The gross receipts from the March 25 sale are $38,000 and the $1,000 manufacturer’s payment is not part of the dealer’s gross receipts from that sale. In addition, the $14,000 payment to the dealer for the sales of the previous 14 vehicles were contingent upon the sale of other vehicles and are not part of the gross receipts from the sales of those vehicles. If the dealer sold a vehicle on March 26 and qualified for another $1,000 manufacturer payment for that sale, the $1,000 manufacturer payment would not be part of the dealer’s gross receipts from that sale.

3. Non-taxable dealer hold-backs [payment not conditioned on the retail sale]: A manufacturer provides dealer hold-back payments to its automobile dealers of 3 percent of the invoice price of each vehicle purchased from that manufacturer. The dealer hold-back payments are paid to the dealer on a quarterly basis regardless of whether that dealer has sold at retail one or more of the vehicles it had purchased that quarter. The dealer purchases a vehicle from the manufacturer at the beginning of the month for an invoice price of $39,000 and then sells that car 10 days later at retail for $40,000. The manufacturer of that vehicle pays an amount to the dealer of $1,170 (3 percent of the invoice price of $39,000) at the end of the quarter as a dealer hold-back for that vehicle. Since the $1,170 hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are only $40,000.

4. Non-taxable [payment not conditioned on the retail sale]: A dealer normally offers a specific type of vehicle for retail sale for $40,000. The manufacturer agreed to pay an incentive to the dealer of $3,000 for each of those types of vehicles that the dealer purchased for resale from the manufacturer during a specified promotional period. After purchasing the vehicle during the qualifying period, Red flags

Continued from Page 1

Examples of Red Flags that Radant said dealerships would encounter include:

• A consumer’s credit report has notice of a credit freeze
• The customer’s address on the credit report does not match his other paperwork
• Recent and significant increases in the volume of credit inquiries
• Accounts that have been closed for cause or identified as abuse of account privileges
• The Social Security number is listed on the death master file
• Discrepancy between customer’s date of birth and the correlating Social Security number range
• Locally, two or three Wisconsin addresses have been attributed to more than 500 immigrants applying for driver’s licenses.

For dealers who intend to treat the Rule internally, Radant said they must be prepared to create, implement, manage and audit a formal program. The NADA will publish a comprehensive guide on the Rule about Aug. 1. Or, many vendors provide the service.

Red flags

Continued from Page 1

appropriately when any Red Flags are detected.

Radant said one-third of all ID theft originates at dealerships. “Think about the number of people coming into your store every month,” he said. “And not just on the sales side. What about repair orders?”

Radant outlined how camera phones can be used maliciously at service writer desks to record information about a customer and his vehicle from an RO. The thief then could call the customer, posing as an employee of the dealership.

“Mrs. Jones,” Radant offered, “this is the dealership calling. I see that you were overcharged for service today on your Plymouth Valiant by $24.95. We can handle the overcharge three ways: I can credit your next service visit by that amount; I can arrange for a check for you—but that will take 30 to 40 days; or I can apply the credit to your charge card immediately, if you give me the account number.” Choosing the third option yields to ID theft.

Examples of Red Flags

The CATA Bulletin is published by the
Chicago Automobile Trade Association
18W200 Butterfield Rd. Oakbrook Terrace, IL 60181-4810

The CATA Bulletin is published and mailed every other Friday except during the Chicago Auto Show, when it is not published.

Listings of items for sale are subject to the approval of the CATA.

Candidates for employment must submit a full resume to the Editor.


Jerry H. Cizek III  
President, Publisher

Erik K. Higgins  
Editor, Director of Dealer Affairs
Donate to NADA’s Charitable Foundation to help Iowa dealer flood victims

BY RAY SCARPPELLI SR.
METRO CHICAGO NADA DIRECTOR

Dealership employees affected by flooding in Iowa have asked for help from the National Automobile Dealers Charitable Foundation. “We processed a number of requests for assistance,” said foundation Chairman Bob Mallon. “Some people lost everything.”

The foundation’s Emergency Relief Fund offers assistance to dealership employees who have been affected by emergencies and natural disasters, such as hurricanes, tornadoes, flooding and fires. Since its establishment in 1992, the foundation has distributed more than $4.1 million to about 6,500 dealership employees.

To support this relief effort, go to www.nada.org, click on Advocacy & Outreach, then Charitable Foundation, then Emergency Relief Fund. Follow the instructions to download the donation form, and fax the completed form to (703) 821-7030, or mail to NADCF, 8400 Westpark Dr., McLean, VA 22102-3591.

In other NADA news . . .
• Applications accepted for the NADAs Dealer Executive Education program at Babson College, which meets Sept. 21-26 at Babson’s Wellesley, Mass., campus. Launched in March, the program offers a six-part, 16-month curriculum designed to enhance the leadership skills of dealership employees.

“Ideal candidates for the program are individuals who are in a position to effect change within the dealership,” says Allan Jones, director of the NADA Dealer Academy.

Instructors lead students through a series of interactive learning activities, including group activities, role-play and video. Students gain insight into leadership traits, decision-making processes, communication skills and “opportunity obsession”—a term coined by Babson.

“This is a lot more than just changing your dealership. This is about making myself a better leader,” said Jared Hamilton of Henry Day Ford in Sandy, Utah. The program teaches how to “think like an entrepreneur and how to think beyond the four walls of the dealership,” said Matthew Haiken of Prestige Volvo in East Hanover, N.J. Babson College has been ranked No. 1 in entrepreneurship for 13 straight years by U.S. News & World Report.

For more information on the NADAs Executive Education program, visit www.DealerExecEd.org.

• Visit the NADAs new full-service Dealer Attitude Survey Web site to take the summer 2008 survey, which will be online until Aug. 7. The survey format is now online only, which will speed up the processing time for the results.

Dealers have received instructions on where to access the new site. For questions, contact NADA Industry Relations at industryrelations@nada.org, or call (703) 821-7010.

• Work with an AYES intern this summer. More than 2,000 qualified students participate in the Automotive Youth Educational Systems program and are available for summer internships. AYES helps train young people to be automotive technicians and prepare them for careers at new-car and -truck dealerships.

“As a school-to-career partnership, AYES is a tremendous way to grow your own workforce,” said NADA Chairman Annette Sykora. “Hiring an AYES student also supports local schools and the community, and can increase the productivity of your dealership’s service department.”

To find a nearby AYES school, call Jim Butcher, the Illinois AYES manager, at (630) 424-6020. More AYES information also can be found at www.ayes.org.

• Be recognized for energy stewardship. The Energy Star program coordinated by the NADA and the Environmental Protection Agency acknowledges dealerships that have met or exceeded the Energy Star challenge by improving their energy efficiency at least 10 percent.

These “green” dealers will get a certificate, a press release distributed to their local media and coverage on www.nada.org—as well as recognition at the annual NADA Washington Conference in September.

For more on the NADAs partnership with Energy Star, visit www.nada.org/energystar.

• Shop the NADA expo floor online with the new virtual exhibit floor from the 2008 NADA Convention & Expo. For direct access to the 2008 NADA Exhibit Directory, visit http://expo.nada.org/, then click on Expo Hall, then Exhibitor Search.

In legislative news . . .
• Register online now for the 2008 NADA Washington Conference, Sept.15-16 (www.nada.org/Trainin gEvents/Washington+Conference/). This year’s conference will provide the latest updates and information to continue the NADAs success in advocating dealers’ concerns to the nation’s lawmakers.

Dealer efforts in Washington were instrumental last year in securing a reasonable legislative compromise on Corporate Average Fuel Economy standards, but much is left to be done on this and other issues like the total-loss disclosure database.

Conference speakers include White House Chief of Staff Josh Bolton and political analyst Charlie Cook.
Dealer cash

CONTINUED FROM PAGE 2

period, the dealer offered the vehicle for sale at a reduced or discounted price of $37,000. A retail purchaser agrees to purchase the vehicle for $37,000. Since the $3,000 incentive provided to the dealer from the manufacturer is conditioned only on the dealer’s purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are $37,000.

5. Non-taxable performance bonus payments: A manufacturer establishes a performance bonus program for dealers who obtain a certain customer service index (CSI) score that demonstrates a substantial degree of satisfaction from their sales and service customers. Upon meeting such requirement, the automobile dealer will receive an incentive payment from the manufacturer calculated as 2 percent of the MSRP of the vehicles sold by that dealer during the incentive period. Because the bonus is contingent on the dealer meeting certain customer satisfaction goals as indicated by the CSI score, the manufacturer’s performance bonus would not be part of the gross receipts received by that dealer for the sales of those vehicles.

6. Non-taxable marketing or facility incentive payments: A manufacturer creates an incentive program for dealers who meet certain marketing standards or facility standards designed to increase sales and brand loyalty. Upon meeting such standards, the dealer will receive an incentive payment from the manufacturer calculated as a flat amount of $500 per vehicle sold by the dealer during the incentive period. Because the incentive is contingent on the dealer meeting certain marketing or facility standards set by the manufacturer, the $500 incentive payments would not be part of the gross receipts received by that dealer for the sales of those vehicles.

Also effective July 1, the revenue department tightened the Interim Use sales-tax exemption and developed a new statement for customers to sign to protect dealers against fraudulently obtained drive-away decals.

• A three-part test now determines if a vehicle qualifies for the Interim Use sales tax exemption.

1. Eligible for Interim Use exemption, if all criteria are met:
   a. The vehicle is listed in the dealer’s records as inventory; is not depreciated under Section 167 of the Internal Revenue Code (normal depreciation); or is otherwise documented in the dealer’s records as available for sale; and
   b. The period of use (or lease) is less than 24 months; and
   c. The item is the same type of property normally sold by the dealer; and
   d. The retailer ultimately sells the vehicle; and
   e. If the dealer leases vehicles, he makes more money from the sale of vehicles than from leasing vehicles; and
   f. If the vehicle is leased for more than 30 days, the lease agreement permits the dealer to terminate the lease within seven days or provide a replacement vehicle within seven days if a buyer is found.

2. Not eligible for Interim Use exemption:
   a. If vehicle title is held by anyone other than the retailer, the manufacturer or a captive finance company; or
   b. If the retailer takes accelerated depreciation on the vehicle under Section 179 of the Internal Revenue Code; or
   c. If the vehicle is rented by the retailer and the retailer makes more money from the vehicle rental than from its ultimate sale.

3. Balancing test. In cases that don’t fall neatly into Parts 1 or 2 above, the Revenue Department will consider these factors:
   a. The dealer’s retail sales history;
   b. Inventory records;
   c. Advertising of the vehicle;
   d. Manufacturer contract conditions;
   e. The length and location of use of vehicle before it is sold;
   f. Whether the vehicle was depreciated under Section 167 of the Internal Revenue Code (normal depreciation);
   g. Ownership and control of documents concerning the vehicle (books, records, titles, insurance documents and the like); and
   h. If the vehicle is leased, whether the vehicle can be recalled if a buyer is found.

• For nonresidents who seek a drive-away decal, the revenue department added a statement for them to sign which creates a safe haven for dealers; previous law allowed the department to pursue the customer or the dealer when a drive-away decal is obtained fraudulently. Illinois tax is not charged on vehicles that will be titled in another state, unless the state is one of eight with which Illinois does not have a reciprocal exemption.

The signed statement, which should be retained in addition to a non-Illinois driver’s license or other ID as evidence of nonresidency, declares: “I (purchaser), under applicable penalties, including penalties of perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois, I am also liable for tax, penalty and interest on this purchase.”