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Suburban dealers impacted by Chicago lease tax change

Suburban dealers must for five years maintain evidence that their lease customers are not Chicagoans, or the dealers risk paying the city's vehicle lease tax, under a recordkeeping change that took effect last month.

The Chicago Revenue Department rules interpretation holds suburban dealers accountable because, in the absence of documentation stating otherwise, Chicago would "presume that the lessee either resided in the City or was staying at a local visiting address in the City," and thus subject to the city's 8.0 percent lease tax.

In the absence of such documentation, Chicago would exact from the lessor any tax plus interest and penalties.

Dennis O'Keefe, the CATA's general counsel, said he expects the recordkeeping change to be challenged in court. The Chicago Revenue Department has the right to audit suburban dealers whose advertising can be seen or heard within the city limits because such reach establishes nexus with the city.

For now, O'Keefe said the burden falls to a dealer to obtain and maintain for five years evidence of a lessee's residence. Acceptable evidence would include a photocopy of the lessee's

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Red Flags Rule compliance date creeps nearer

CATA to host Oct. 3 seminar

Every U.S. auto dealership must adopt a formal program by Nov. 1 to prevent and respond to efforts to buy vehicles by customers using false identities.

The Federal Trade Commission, which is enforcing the "Red Flags Rules," can fine a dealership as much as $2,500 for selling a car or truck to a buyer who uses a false identity. Each subsequent violation carries a fine of as much as $11,000.

An attorney of the National Automobile Dealers Association will conduct a free seminar at the CATA on Oct. 3 about compliance with the new regulation. See the flier in this newsletter to register to attend.

The Red Flags Rules — named after the symbol of a warning of possible trouble — are a sequel to the Safeguards Rule, issued by the FTC in 1999.

The older regulation aims to prevent the theft of customers' credit data from businesses such as dealerships. Paul Metrey, director of regulatory affairs at the NADA, said dealerships can comply with the regulation by working with their lawyers. An NADA guide to help dealers with Red Flags compliance is available at www.nada.org/RedFlags. The cost of obeying the rule will depend on a dealership's size and complexity, Metrey told Automotive News. "This is not a one-size-fits-all requirement," he said.

However, there are bright spots to consider for dealers who feel overwhelmed or annoyed by yet another compliance burden:

- Having a written Identity Theft Prevention Program can increase the likelihood that employees will more consistently follow policies and procedures the dealership already has in place to help ward off identity theft and fraud; and
- Although dealers must carefully analyze their operations and prepare an ITPP that is specifically tailored to their respective businesses, "the task is not insurmountable and dealers should not automatically conclude that they must expend significant sums of money to achieve compliance," said Metrey.

The Oct. 3 presentation at the CATA will review what dealers must do to comply with the new regulation, such as:

- Conducting a preliminary risk assessment
- Constructing a written ITPP
- Knowing the indicators of identity theft (Red Flags) and how to respond to them
- Training requirements
- Obtaining service provider over-

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Is current credit squeeze hardest on the dealership's F&I manager?

Amid all the cries of wolf about the economy, one would assume the toughest job at a dealership these days is that of the sales staff. But The Financial Times newspaper assigns that dubious distinction instead to the finance manager.

The F&I manager's work life is "extremely difficult" compared to a year ago, said Carl Strobl, who holds that title at a Chrysler-Jeep dealership in eastern Pennsylvania.

Almost every way of paying for a new vehicle, apart from hard cash, has become less accessible or more expensive, or both. "Sometimes customers have to move down in vehicle price, or put more cash in the deal, or they turn to used cars," says Mark LaNeve, marketing chief of General Motors North America.

LaNeve estimates that tighter credit is costing GM about 10,000 vehicles a month in lost sales. It sold 307,300 cars and light trucks in August, down from 385,500 a year earlier, a 20 percent drop. Industry sales during the summer plunged to their lowest levels in more than a decade.

HSBC and Texas-based Triad Financial are among lenders that have pulled out of vehicle financing in recent months. Citigroup chopped its car loan advances by more than half in the second quarter to $800 million, from $2.8 billion a year earlier. Even buyers with strong credit records are being asked for bigger deposits to secure a loan.

Americredit, a Texas-based finance company with about 1 million vehicles on its books, charges borrowers 3 to 4 percentage points more now than in early 2007. "And I don't think that's the extent it could be, going forward," Dan Berce, chief executive, told an investment conference this month.

Americredit has also become choosier, pushing up the average household income of its customers from about $50,000 a year to $60,000. "We repossess and take loans to default quicker than we did five to six years ago," Berce added.

While the credit crunch is squeezing the entire industry, it is most acute for the three beleaguered Detroit carmakers — GM, Ford Motor and Chrysler — and their financing arms. Chrysler Financial shocked dealers and customers by pulling out of the leasing business last month because of the high cost of funds.

Strobl's dealership has struck deals with two independent leasing companies. However, leasing terms have tightened sharply, especially on big sport-utility vehicles and pickup trucks, to reflect lower resale values at the end of the lease.

On another front, the housing slump has dried up access to home-equity loans, an important source of funds for vehicle purchases.

CNW, an Oregon-based automotive research company, estimates that home-equity loans financed 5.3 percent of vehicle purchases in the first seven months of this year, down from 11.8 per cent in 2007. The drop was especially steep in California and Florida, where house prices have fallen furthest.

Art Spinella, CNW's president, says that financial institutions are forcing homeowners to reapply for lines of credit because of dramatically lower house prices.

Vehicle financing has also taken a knock from the meltdown in the asset-backed securities market. Lenders obtain much of their funding by selling packages of securities backed by car loans and leases.

According to JPMorgan, spreads (risk premiums) on the three Detroit carmakers' ABS issues have climbed from 0.15 percentage points above the market benchmark in January to a record 0.75-1 point in early September.

Even Nissan was forced earlier this month to top up the reserves associated with two lease ABS issues in order to retain their triple A Standard & Poor's credit rating. JPMorgan concluded in a recent report that "liquidity has diminished for even top-tier names and, at the other end of the spectrum, evaporated for weak, off-the-run names."

Red Flags

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sight

• Involving a dealership's board of directors

The Red Flags Rule requires a "senior management" Compliance Director and allows for a mid-level Program Coordinator as well, so dealerships should consider sending both of these individuals to the seminar.

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full resume to the Editor.

Review past editions dating to 1998 or search by subject at http://cata.drivechicago.com.

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Wage and hour regulations: a quiz

The nuances of the Fair Labor Standards Act are many, and especially relevant for dealers who experiment with different types of pay plans or operate under a "one-price" mode.

At some dealerships, no employees—not even the salespeople—are paid a commission, even if they work more than 40 hours a week. Under the FLSA, must a sales rep be paid time-and-a-half for exceeding a 40-hour workweek?

No. Automobile salespeople are exempt from the overtime provisions of the FLSA. How they are paid is irrelevant, as long as they are paid at least the minimum wage. The exemption from overtime extends to some other dealership employees as well.

According to a publication by the NADA: "In general, service salesmen (also) fall within this overtime exemption. Specifically, employees variously described as service writers, service advisors, or assistant service managers whose primary duty is to record the condition of a vehicle and write up a report indicating the parts and mechanical work needed for restoration may qualify for the exemption provided that more than 50 percent of their sales volume is for non-warranty work."

Parts counter employees and mechanical technicians also are exempt from the overtime provisions of the FLSA.

Tales abound of dealers who, having violated the FLSA, must pay hundreds of thousands of dollars in back pay and penalties. For dealers to test their compliance, a quiz has been developed based on information taken from the U.S. Labor Department's Web site, www.dol.gov

Pencils ready!

1. Dealership general management establishes a policy that overtime will not be paid unless it is approved in advance. An accounting clerk works extra hours to complete a task. Should the clerk be paid time-and-a-half for the extra hours?

A. Yes, federal law requires it.

B. No, the clerk disobeyed a company rule.

C. Only if the work was an essential part of the job.

ANSWER: A. Under the FLSA, employees are entitled to be paid for all hours worked.

2. What is the current federal minimum wage?

A. $5.50 an hour

B. $5.85 an hour

C. $6.55 an hour

D. $7.75 an hour

ANSWER: C, $6.55 an hour.($7.75 is the Illinois minimum wage. Indiana follows the federal minimum.)

3. How many paid holidays does the federal government require a car dealer to give each year?

A. Five

B. Seven

C. Nine

D. None

ANSWER: D, None. Holidays are a matter of agreement between employers and employees.

4. An enthusiastic car porter who doubles as the clean-up person for the service department agrees with the service director that he will accept only straight time for any hours above 40 put in during a week. Is this a legal agreement?

A. Yes, it is a valid agreement between employer and employee.

B. No, it violates federal law.

C. It is legal as long as the agreement is completely voluntary.

ANSWER: B. Employees are not permitted to waive their right to overtime pay.

5. The general manager docks his salaried dealership controller for working only 32 hours one week due to a family funeral. Is this legal?

A. Yes, an employee does not have to be paid for time not worked.

B. No, salaried employees cannot be docked for hours not worked.

C. Yes, the contoller must be paid as long as he had a good excuse.

ANSWER: B. A company cannot withhold pay from a salaried worker unless the situation is covered in a written leave policy.

6. Dealership policy is to pay employees every two weeks. An hourly employee works 60 hours in one week and 30 hours the next. How much overtime is he due?

A. 20 hours

B. 10 hours

C. None

ANSWER: A. Overtime hours cannot be averaged over multi-week periods.

7. An hourly lube technician being paid near the minimum wage is charged for dealership-required uniforms. The charge reduces the tech's average hourly pay to less than the minimum wage. Is this legal?

A. Yes.

B. No

ANSWER: B. Employer-mandated charges cannot bring a worker's hourly wage below the minimum.

8. An accounting supervisor spends half her time supervising the accounting staff and half her time doing the same work as the staff. Is she eligible for overtime?

A. Yes, she is not considered an executive under FLSA.

B. No, she is primarily a manager.

ANSWER: A. Even though she supervises other employees, she does not qualify for the executive exemption to the overtime provisions of the FLSA.

How'd you score?

AYES update, Fall '08

By Jim butcher
Illinois AYES Manager

As we move into the fall season, it is important to remember that your local AYES school has students available for your service department.

These AYES qualified students are currently seniors in high school and are available to work on a part-time basis while they finish their high school studies.

The qualification process for these students to join AYES is incredibly strict. Some of the qualifications include A's in automotive classes and at least C in all other classes; recommendations of all their instructors; no dean referrals; excellent attendance, initiative, cooperation, dependability, and a great driving record.

These students are scheduled to conclude their automotive training at the end of this school year. Currently, these students have completed half of their high school-level automotive training.

Should you have a need for entry-level qualified employees, please call me 630-424-6020.

It is finally here, our newest AYES schools are ready to launch! On Oct. 15, we will launch an AYES program at Carl Schurz High School, at Addison Street and Milwaukee Avenue in Chicago. Following that will be the Oct. 29 AYES program launch at Belvidere High School, near Rockford.

Congratulations to these two schools for their commitment to the AYES model of automotive training. Look for more details in the next CATA newsletter.

Lease

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driver's license, a photocopy of some other government-issued identification, or other reliable written proof of residence.

The latter may consist of a statement from the lessee, such as the name and address of the hotel or other location at which the lessee is staying while visiting the area, and the location in which the lessee expects to be using the vehicle, according to the Chicago Revenue Department rules change.

Become a Green Checkup Dealer

The NADA is urging dealers to offer free Green Checkups during September. A Green Checkup focuses on the things that have the greatest effect on fuel economy. To become a Green Checkup Dealer, go to www.nada.org/green/getinvolved/greencheckup/Green+Checkup+Signup.htm

DOC fee suits swamp Missouri dealers; 'processing' = lawyering

Auto dealers across America do it every day. But retailers in Missouri who charge customers a "document processing fee" find themselves in the cross hairs of lawsuits that allege they are practicing law without a license.

Law firms in St. Louis, Kansas City, Springfield and other Missouri cities are going after dozens of dealers in state and federal courts. One Kansas City plaintiff's lawyer warns the issue could result in civil penalties of $1 million to $4 million per dealership.

The Missouri Supreme Court last year upheld that only lawyers can charge for handling documents, in a challenge unrelated to auto dealerships. But interpretations of the law are being worked out, and judgments against dealerships could be years away.

More than 50 dealerships already have been named as defendants in the document-fee suits, says Johnny Richardson, legal counsel for the Missouri Automobile Dealers Association. "Eventually, I think we're going to see these suits filed against every dealership in the state that ever charged a fee," Richardson said.

Illinois dealers may charge DOC fees up to $150. But retailers across the United States use — and sometimes abuse — the practice of tacking dealer charges of $200 to $500 onto sales contracts under the guise of document handling. Consumers in New Jersey, Tennessee and Arkansas have challenged the practice on a case-by-case basis.

But the situation in Missouri is different. Under Missouri law, charging consumers for "document processing" is something only lawyers can do. State law requires that any nonlawyer who collects such a fee effectively is practicing law without a license and, therefore, must refund it at three times the amount collected, say plaintiffs' lawyers.

Keith Lamb, a lawyer whose Kansas City firm is, by itself, representing consumers in lawsuits against as many as 40 dealerships, speculates that the refunding of fees could be made retroactive for five years.

"Do the math and you can see that this could get extraordinarily expensive for some of these dealers," Lamb said.

The state Supreme Court's ruling last year triggered a wave of lawsuits around the state in which consumers are now suing mortgage companies, boat dealerships, motorcycle retailers, RV dealers and other big-ticket retailers to refund their DOC fees.

Some of the lawyers now seek to bring the state's vehicle consumers together in a class action case over the document fees, but that plan is under review. Richardson says there has been no decision in any of the consumer complaints.