



2010 Illinois DOC fee max is \$154.38

The maximum amount that Illinois dealers can charge in 2010 for documentary preparation fees is \$154.38, the Illinois attorney general's office announced Dec. 17.

The \$2.73 increase over the 2009 maximum fee reflects a 1.8 percent rise in the federal Consumer Price Index for the 12-month period ending Nov. 30. The index is tracked by the U.S. Department of Labor. As always, the DOC fee is taxable and must be substantiated upon request by the attorney general's office.

The CATA developed a poster about the DOC fee that dealers can display. On the poster, the DOC fee amount is left blank for dealers to fill in; any amount up to the maximum allowed may be charged, but all customers must be charged the same amount. Systematically charging one group but not another—all males but no females—could bring charges of profiling.

Two copies of the poster are included with this newsletter for dealers. For limited additional copies, call the CATA at (630) 495-2282.

IMPORTANT: The new maximum fee cannot be charged before Jan. 1.

David Sloan named new president of CATA

David Sloan, who since 1993 has served as executive vice president of the Chicago Automobile Trade Association, ascends Jan. 1 to association president and general manager of the Chicago Auto Show.

Sloan succeeds Jerry Cizek III, who is retiring after 36 years at the CATA, 21 years at the helm. Cizek will serve as co-general manager of the 2010 Chicago Auto Show and remain as a consultant for the CATA until July 1.

"We are extremely fortunate to have Dave to follow in what clearly are big footprints," CATA Chairman Kevin Mize said. "Previous boards of directors planned well for

our future by grooming Dave for this position for the past 16 years. I can't imagine that we could have had a more positive and productive scenario for a change of command."

Sloan takes the reins amid tumult in the industry and with Illinois's coffers \$12 billion in the red.

"We have to continue to deliver the most value to our members as possible, those who are successful and those whose very livelihoods are threatened," he said. "We have fewer resources to work with for the time being, so we'll have to work hard to get the job done."

The CATA is prepar-



David Sloan

ing to host seminars in January that examine the unfunded pension liabilities of unionized GM and Chrysler dealerships rejected this year by the manufacturers, and other matters facing dealers like changes to the LIFO accounting method.

SEE SLOAN, PAGE 4

Newsletter ends print edition, goes digital

Consider yourself to be holding a collector's item, of sorts: the final print edition of the CATA Bulletin. Beginning Jan. 11, the publication's contents will be available by computer only.

Visitors to the CATA's Web site, www.cata.info, can review current and past issues of the newsletter. New edi-

tions also are disseminated using the association's targeted blast e-mail campaign.

Those who want to receive the CATA Bulletin via e-mail must send their e-mail address to the newsletter editor at editor@cata.info.

SEE NEWSLETTER, PAGE 2

Rejected GM, Chrysler dealers win 6-month arbitration process

WASHINGTON—Legislation signed Dec. 16 by President Obama gives rejected General Motors Co. and Chrysler Group dealers access to neutral arbitration if they want to be reinstated, kicking off a 220-day arbitration process.

GM and Chrysler have until Jan. 15 to send letters to the owners of about 2,150 rejected dealerships, informing them of their rights under the new law and spelling out the reasons that their franchise agreements were terminated. The eliminated dealerships have until Jan. 25 to give notice that they intend to seek arbitration.

Arbitration must be completed within six months, and dealerships that win must receive a letter of intent from the automakers within another 14 business days.

Rejected dealers who elect arbitration must pay their own fees, expenses, and costs associated with the arbitration, as well as half of the shared costs of the arbitration—arbitrators' fees, meeting room charges, administrative costs and such.

The dealer-rights legislation was part of a \$446 billion spending bill. Leading Democrats acted after GM and Chrysler

broke off settlement talks and announced plans to create neutral arbitration applying the original criteria they used to mark dealerships for termination.

The new law contains criteria more favorable to dealers than those envisioned by GM and Chrysler.

The arbitrator will decide if a dealer should be reinstated by balancing the economic interests of the dealership, the manufacturer, and the public. Considerations include:

- the dealership's profitability in 2006-2009;
- the manufacturer's overall business plan;
- the dealership's current economic viability;
- the dealership's satisfaction of the performance objectives established by its franchise agreement;
- the demographic and geographic characteristics of the dealership's market territory;
- the dealership's performance in relation to the criteria used by its manufacturer to terminate, not renew, not assume or not assign the dealership's franchise agreement; and
- the length of experience of the dealership.

EPA issues new emissions rule

Dealer body shops have until Jan. 11 to abide by a new Environmental Protection Agency rule governing hazardous air pollutants (HAPs). After then, the shops:

1. Paint only inside filtered, ventilated paint booths or prep stations.
2. Use high transfer efficiency application equipment.
3. Clean guns with non-hazardous solvents, in gun-enclosed washers, or using a method that does not involve atomized spraying to the open air.
4. Have painters trained and certified every five years.
5. Keep basic records demonstrating compliance.

The rule also allows a shop to petition for an exemption if it does not spray coatings with any of the above-listed HAPs of concern; and it excludes the spraying of coatings from hand-held guns with paint cups of 3.0 fluid ounces or less.

Also, paint stripping involving methylene chloride (MeCl) is significantly regulated for shops using more than one ton of MeCl a year. Where possible, body shops should avoid the use of strippers containing MeCl.

Marketplace

Office Manager 36 years' dealership experience, 31 years as office manager. Organized and detail-oriented, with strong administrative skills. Background in executing employee health and 401(k) plans. Terry Kujawa, (708) 201-9912. Résumé on file at the CATA.

Newsletter

CONTINUED FROM PAGE 1

The blast e-mail campaign has been operating for several years, so those who already receive the e-mails need not notify the editor. All e-mail addresses collected by the CATA are held in strict confidence, and the campaign includes opt-out options for those who want to stop receiving the newsletter.

Printing and first-class mail costs played a role in the decision to drop the newsletter's print version, at a time when all businesses are reviewing expenses.

Any informational fliers that historically have been inserted into this newsletter will be part of the e-mail campaign, but not necessarily on the Web site. So being part of the e-mail distribution ensures receipt of everything, going forward.

Paper cuts, I cast thee out.

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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.

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

Jerry H. Cizek III
Erik K. Higgins

President, Publisher
Editor, Director of Dealer Affairs

Restlessness permeates CATA seminar on sales tax issues

A crowd of more than 100 people listened intently through the first hour of a CATA seminar examining sales tax issues faced by Illinois dealerships. But the audience grew audibly frustrated when discussion turned to Illinois Revenue Department audits and auditors that don't always follow the department's statutes.

Stanley Kaminski, a partner with the Chicago law firm, Duane Morris; and Mark Dyckman, a deputy general counsel of the revenue department, led discussion at the Dec. 21 presentation, which touched on about half of the meeting's agenda of recent issues involving department rules, audits and litigation. Audience questions dominated the time allowed, and the CATA was asked to bring the pair back in an ongoing seminar series about tax matters.

Out-of-state purchasers

Tax liability for dealers essentially has been eliminated on transactions involving a fraudulent out-of-state purchaser—someone who lives in Illinois but poses as a Wisconsinite because of a vacation home in that state.

Record-keeping now involves just three documents:

- a copy of the purchaser's non-Illinois driver's license; or a copy of an out-of-state real estate contract, if the buyer is newly moved and has not yet obtained a new license;
- a copy of the drive-away permit; and
- a statement signed by the buyer, under penalties for perjury and fraud,

that he is not an Illinois resident.

For persons found to be an Illinoisan, the revenue department pursues the buyer, not the dealer, for the taxes. "If you have those three documents," said Kaminski, "you're golden."

But what of a snowbird, with residences in Illinois and, say, Florida? Kaminski told the questioner not to issue a drive-away permit but to ship the vehicle to Florida, to exempt the deal from sales tax. He said delivering the vehicle overcomes the limits of drive-away permits.

Dealer cash

The speakers recounted a major change on dealer incentives that took effect last year. The 2008 regulations depict six distinct types of transactions. One type—money awarded by the manufacturer for the particular sale of a particular vehicle—is taxable. The other five are tax-exempt, like payments for stair-step programs, performance bonuses and marketing and facility improvements.

"You have to look at what the incentive relates to," Dyckman said, to determine if it is taxable.

Trade-in credits

Advance trade-in credits, a device actually developed by the revenue department, and third-party trade-in credits also were discussed at length. Kaminski explained that a buyer can involve any number of advance credits in a transaction, or any number of third-party credits in a transaction, but not one of each.

That would stymie the following scenario, Kaminski said: A father trades in his vehicle today and wants to award the tax credit to his son, for a car the son will buy next week. Kaminski said the credit could be transferred only if both transactions occur at the same time. By putting off the second deal, the father's credit becomes an advance credit, which cannot be transferred.

Aggressive auditors

Dyckman, who manages the revenue department's attorneys involved in sales tax hearings, conceded that some field auditors are more aggressive than others and that not all auditors always interpret the statutes accurately.

Generally, if the dealer writes a check to the customer, the tax credit is reduced by that amount because the dealer in effect is buying all or part of the trade-in. But Dyckman said certain auditors interpret the statutes to indicate that ANY money returned to a customer reduces the traded-in vehicle's tax credit. That would seem incorrect, in this scenario:

A man trades in a vehicle appraised at \$20,000 and he wants to buy a new car for \$30,000. The man also wants to remodel his basement, so he applies to a bank for a \$20,000 loan, and the bank sends all \$20,000 to the dealer. Because the dealer gave \$10,000 back to the customer, the auditor said the trade-in's value became \$10,000.

Dyckman said the money given back to the customer should be recorded as "return of overpayment," to bolster the dealer's defense in any audit.

Latest 'Chicago Auto Outlook' is online

The latest Chicago Auto Outlook publication examines the area's new-vehicle sales and other data during the first 10 months of 2009 and compares the data to the same period last year. The publi-

cation is on the CATA's Web site, www.cata.info.

On the tan bar across the top of the home page, click on Publications and follow the drop-down menu to Chicago Auto Outlook.

Holidays to close CATA office

The administrative office of the Chicago Automobile Trade Association will close Thursday, Dec. 24 and Friday, Jan. 1 for New Year's Day.

The CATA board of directors and staff wish all our members and their families a happy and prosperous 2010!

FTC issues new 'optional' model privacy notice, effective Dec. 31

The Federal Trade Commission and federal banking agencies have amended the Privacy Rule to include a new model privacy notice that dealers and other financial institutions can use to describe their privacy policies to their finance and lease customers.

Dealers who adopt the model notice consistent with its instructions will receive safe harbor protection for the language used in the notice beginning Dec. 31, 2009.

Dealers who continue to provide their finance and lease customers with a privacy notice that uses language from the sample clauses contained in Appendix A to the text of the original Pri-

vacancy Rule (which required compliance by July 1, 2001) will lose safe harbor protection for the language used in those notices after Dec. 31, 2010. Dealers thus should consider transitioning to the new model notice before the end of 2010.

The new model notice stems from section 728 of the Financial Services Regulatory Relief Act of 2006, which directs the FTC and the federal banking agencies to jointly develop an optional model form for financial institutions to make the required Privacy Rule disclosures and to have the form serve as a safe harbor for financial institutions that elect to use it.

The purpose of the law is to promote the use of a more

understandable privacy notice that enables consumers to more easily compare the privacy practices of different financial institutions.

The form accomplishes that in part by setting forth various types of information-sharing with adjacent columns for the financial institution to indicate whether it engages in such sharing and whether the consumer has the right to limit such sharing.

The development of the final model notice follows extensive consumer testing and the agencies' review of numerous public comments.

The agencies' adopted several recommendations contained in NADA's comments, such as allowing finan-

cial institutions to include an Acknowledgment of Receipt on the form for consumers to sign without losing the model notice's safe harbor protection (see Footnote 14 in the Supplementary Information to the Final Rule).

There are a number of detailed rules that users of the new model privacy notice must follow. The final rule containing the new model privacy notice is at <http://edocket.access.gpo.gov/2009/pdf/E9-27882.pdf> (the amendments to the FTC Privacy Rule begin on page 62,965).

For a refresher on the Privacy Rule's application to franchised dealers, see www.ftc.gov/bcp/edu/pubs/business/autos/bus64.pdf.

Sloan

CONTINUED FROM PAGE 1

"Dave's experience and creative energy," Mize said, "will help make our association even stronger."

Sloan, 45, joined the CATA in 1993 after working for Golin Harris Communications as an account supervisor of the Chrysler account. Previous to that, he was on the public relations staff of General Motors, handling media relations surrounding product recalls, and public relations and publicity for the advanced engineering staff and the GM Research Labs. His initial assignment with GM was in the Chicago regional PR office, where he first became involved with the Chicago Auto Show.

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Board members welcome any questions and comments from their fellow CATA members!