Volume 115, No. 26 December 31, 2018

Dealers in Reynolds-CDK lawsuit face Jan. 2 deadline on class action status

Dealers who wish to be excluded from the class action settlement with Reynolds and Reynolds in the lawsuit over excessive DMS charges must send a first class letter, postmarked by Jan. 2, indicating that intention.

Dealers are urged to review information on the settlement website at https://dealershipclassdmssettlement.com, or to contact class counsel, Len Bellavia at (516) 606-6000 or Peggy Wedgworth at (646) 515-1269.

The dealers' class action lawsuit alleges that Reynolds and CDK engaged in an antitrust conspiracy to restrain competition in the markets for DMS services and data integration services.

If you choose to opt out, you will no longer be a part of the settlement class against Reynolds, and you will have to litigate your own claims. Prior to opting out or excluding your dealership from the Reynolds settlement, you should consider:

• The settlement with Reynolds avoids the risk that class members will receive nothing at all. If dealers opt out and wish to pursue their own claims against Reynolds, there are risks and costs of doing so. The risk that dealers may ultimately be unable to prove that Reynolds conspired with CDK cannot be overlooked. In this regard, it is noteworthy that the Seventh Circuit Court of Appeals, in vacating a preliminary injunction against Reynolds and CDK in the Authenticom case stated, "Until 2015, the system furnished by CDK placed no restrictions on harvesting by third-party integrators; Reynolds, in contrast, has always forbidden that practice in its system licenses." Authenticom v. CDK Global, LLC, 874 F.3d 1019, 1022 (7th Cir. 2017).

• Prior to reaching settlement, Reynolds moved to dismiss the case in its entirety, on numerous grounds. (The settlement avoids the need for a ruling on the motion). One of Reynolds's principal arguments is that dealers signed arbitration agreements requiring them to individually arbitrate their claims against Reynolds. Courts (including Judge Dow presiding over this case), have routinely enforced arbitration agree-

See **Lawsuit,** Page 2

Supreme Court decision affects dealers' sales and use tax responsibilities

By Glenn M. Feldman, CPA; Michael J. Gamboa, J.D.; and Daniel E. Megathlin, Crowe

The sales and use tax landscape is rapidly changing in the wake of the U.S. Supreme Court's decision this year in South Dakota v. Wayfair, Inc. The decision overturned the longstanding bright-line rule from Quill Corp. v. North Dakota, which required that a taxpayer have some physical presence in a state in order for that state to be able to impose a filing and collection responsibility for sales and use taxes.

The Wayfair decision removed the requirement for physical presence after upholding the South Dakota statute in question, which provides for the following:

• Prospective application. The effective date of the South Dakota law was tied to a decision by the highest court validating the constitutionality of the statute.

• Small-business threshold. The law applies to out-of-state sellers that have more than $100,000 in sales or 200 transactions per year delivered into the state.

• Streamlined Sales Tax Project. South Dakota is a member of the SSTP, which has simplified rules consistent with the other members. It also has state-funded compliance software with audit protection.

Businesses historically have relied on the bright-line physical presence standard for protection against the burden

See **Wayfair,** Page 4

Generation Z sees little appeal in electric vehicles: J.D. Power study

From all the news reports that younger Americans are more tuned in to sustainability and environmental issues than are their elders, Generation Z may not be walking the talk when the rubber hits the road.

In a new survey by researchers at J.D. Power, more than half (54 percent) of U.S. consumers between the ages of 18 and 24 said that they would not consider purchasing an electric vehicle. That's a much higher percentage than the 41 percent who said the same thing in a 2017 survey. That is not particularly good news for automakers that have started down a path to electrify most or all of their new models over the next decade.

Compared with the 2017 survey, in which 42 percent of Gen Z consumers said they would consider purchasing a hybrid vehicle, just 21 percent said they would consider a hybrid. Plug-in hybrids fared nearly as badly: 18 percent of those surveyed this year said they would consider a plug-in hybrid, compared with 28 percent a year ago.

Less than a quarter (24 percent) of Gen Z consumers surveyed in 2017 said they would consider an all-electric vehicle. That percentage dropped to just 13 percent this year.

A major concern among the young potential buyers is the availability of charging stations, especially at their homes. Because many of them are renters, they have to depend on their landlords to provide charging stations, and that is not happening. Nearly two-thirds (64 percent) of those surveyed have never seen a charging station anywhere, much less one at their place of residence.

Another reason for the lack of interest in electrified vehicles may be a lack of exposure to carmakers' marketing efforts. Manufacturers put their marketing dollars where they expect a significant return and, to date at least, those returns are coming from gasoline-powered vehicles, especially pickup trucks and sport utility vehicles. Young consumers are not seeing the advertising mostly because there isn't much of it.

High prices for electric cars compared to gasoline-powered vehicles also play a part. Young consumers often have to juggle student loan repayments, rent, commuting costs and a host of other demands on often low starting salaries. Budgeting a down payment and monthly payments on a $35,000 electric vehicle ends up with it pretty far down the list.

The situation may change over time, according to J.D. Power global automotive consulting manager Heather Raulerson:

"Increased advertising," she said, "will raise awareness, which could lead to an increase of electric vehicles being purchased. This could lead to infrastructure changes across not only roadways but also where people live, giving landlords incentives, for instance, to install charging stations for apartments/lofts, etc. It is a domino effect that must start somewhere to increase the number of consumers who will consider any form of electric vehicle."

The auto industry is betting on electric vehicles and it will have to do something to get young consumers to consider buying the vehicles they say they're going to be building in the future.

Lawsuit

Continued from Page 1

ments. Thus, there is a very significant risk that Reynolds dealers, in the absence of settlement, would be required to individually arbitrate their claims against Reynolds, and incur the expenses (including all the legal expenses and expert fees). This risk, as well as other risks, are more fully addressed in our final approval brief and declaration, submitted in support of the settlement, posted on the settlement website.

• Additionally, the settlement releases various counterclaims that Reynolds may have against Class Members regarding the sharing of user IDs and passwords with third parties. Reynolds, however, may assert those counterclaims against dealers who opt out of the class. We encourage you and your clients to review the releases in the settlement agreement (posted on the website, Section A.1(x)-(y), ¶¶ 6-7) carefully, which, among other things: (i) "do not release, alter, or affect any existing or future contractual obligations between Reynolds and a Dealership Class Member for Reynolds to provide products or services to the Dealership Class Member and for the Dealership Class Member to pay for those products or services."

CATA holiday closing

The Oakbrook Terrace office of the Chicago Automobile Trade Association will be closed Dec. 31 and Jan. 1 for the New Year holidays. Business hours resume Jan. 2.

Best wishes for a prosperous 2019!

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

The CATA Bulletin is distributed via blast email every other Friday except during the Chicago Auto Show, when it is not produced.
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 www.cata.info/publication/bulletins.

David E. Sloan — President, Publisher
Erik K. Higgins — Editor, Director of Dealer Affairs

No key? New Hyundai SUV lets drivers use fingerprints instead

Smart keys, it appears, are so 2018. Beginning in 2019, Hyundai will sell cars that drivers can unlock and turn on with the touch of a finger.

The carmaker unveiled the new Santa Fe SUV at a Chinese auto show on Dec. 14, and its new fingerprint technology allows consumers to do more than open doors.

Hyundai said that multiple owners will be able to register their encrypted fingerprint data on a car and also record certain driving preferences, according to Engadget, a multilingual technology blog network that covers gadgets and consumer electronics.

The vehicle, which will be limited to the Chinese upon its first-quarter launch, will also adjust mirror angles and seat positions based on who opens its door. Eventually, Hyundai hopes that it will be able to automatically customize temperature, steering preferences, and more.

Synaptics, a San Jose-based company known for creating touch technology for the original iPod's click wheel as well as touch sensors for many current Android phones, recently told AutoWeek magazine that it was eager to begin bringing this technology to cars.

"Fingerprint sensors can also act as navigation devices to control menus on a heads-up display or instrument cluster," the company told the publication.

Although this is the first car to offer a fingerprint reader that's built into a door's handle or ignition button, Engadget noted that the Tesla Model 3 does allow drivers to start their cars with a smartphone-enabled fingerprint scan.

Of course this technology could come with risks. New research by New York University and Michigan State University, for example, found that artificial intelligence can create fake digital fingerprints that are able trick phone fingerprint scanners — the key to everything from app store purchases to bank account information.

Still, Hyundai claims that its fingerprint technology has an error rate of 1 in 50,000, which is identical to Apple's error rate per finger on its touch technology. Considering that motor vehicles were stolen at a rate of 236.9 per 100,000 in 2016, fingerprint technology is a risk that people probably will be willing to take.

Annual retail sales fall for second consecutive year but consumer expenditure reaches highest level ever

New-vehicle retail sales in December are expected to fall from a year ago, according to a forecast developed jointly by J.D. Power and LMC Automotive. Retail sales are projected to reach 1,310,700 units, a 1 percent decrease compared with December 2017.

"Despite retail sales falling for the sixth consecutive month, the continued growth in transaction prices is allowing manufacturers to offset lower sales with higher revenue," said Thomas King, senior vice president of the Data and Analytics Division at J.D. Power. "Consumers are on pace to spend nearly $45 billion on autos in December, up 1 percent from last year and the highest level ever recorded."

The average transaction price in December is on pace to reach $34,292, another industry record. This reflects growth in prices for cars (up $591 to $27,754) and trucks/SUVs (up $173 to $36,548).

Incentive discipline has continued into December, as spending is expected to decline year over year for the sixth consecutive month. December to-date spending is $4,098 per unit, down $164 from the same time last year. Spending on cars is down $663, while spending on trucks/SUVs is up $42. Retail sales for the calendar year are expected to reach 13.9 million, a decline of 1.3 percent from last year.

"While 2018 marks the second consecutive year of sales declines, strong revenue and lower spending are helping to maintain profitability," King said. "Looking ahead to 2019, a record number of truck and SUV launches will help manufacturers better align portfolios with overall demand."

Nearly 45 all-new or major re-designed vehicles are expected to launch next year, with 28 being a truck or SUV.

Next year, the auto industry will continue to face heightened uncertainty and intense competitive challenges due to conflicting macro factors, the continuing SUV/car shift and the growing number of new electic vehicles joining the market.

Tune in ...

. . . to "Drive Chicago," the CATA's automotive radio show, 8-9 a.m. Saturdays on WLS-AM 890.

Member-discounted auto show tickets on sale

Tickets and vouchers that admit the holder to the 2019 Chicago Auto Show free or at a reduced price can be ordered by CATA members using the order form posted at www.CATA.info.

The passes promote goodwill with customers and even can help persuade a prospect to close a deal. Two kinds of passes are available, General Admission ticket and Weekday Discount voucher. The former, which costs CATA members $600 for 100 tickets, admits the holder to the auto show free, without a box-office wait. The Weekday Discount voucher costs members $100 for 100 and admits the holder for $7 during the week.

Regular admission is $13. A minimum 100 passes must be requested with either order.

Flying cars analysis: 20 years, $2.9 trillion

Flying cars, long a staple of science fiction, may be landing in the real world sooner than people think.

Sleek vehicles floating above their more chaotic, terrestrial siblings are common trope in stories of a more technologically advanced future that now may not be so distant. Intersecting economic and technological factors including better battery efficiency, artificial intelligence and improved satellite communication may provide just the right incubator to supercharge the development of flying cars, analysts at Morgan Stanley said this month.

"If you're bullish on autonomous cars, it's time to start looking at autonomous aircraft," the analysts, including Adam Jonas, Ravi Shanker and Rajeev Lalwani, said in a research note this month. In many ways, an aircraft is "an easier software problem to solve than an autonomous car," they wrote, pointing out that drones have been used in the military for years and now are being tested for package delivery.

Technology industry titans long have dabbled with the idea. Google cofounder Larry Page has backed Zephyr Airworks, a flying-car startup, while Uber Technologies Inc., Boeing Co. and Airbus SE, have joined a government-led group in Japan to bring airborne vehicles to the country in the next decade. Lockheed Martin Corp. is investing in electric and autonomous VTOLs, or vertical takeoff and landing vehicles, the Morgan Stanley analysts noted. Northrop Grumman Corp. probably is involved as well, while Raytheon Co. and Harris Corporation are pushing ahead with air traffic control technology, they said.

Transporting freight using the technology is a much nearer term possibility than humans, especially with smaller, more lightweight drones. According to the analysts' most bullish calculations, it could become a $2.9 trillion global market by 2040, while the most pessimistic estimates peg the value to about $615 billion.

Cash has also been flowing to startups. Page has funded several flying-car aspirants.

Wayfair

CONTINUED FROM PAGE 1

of compliance and sales tax liability. Similar to South Dakota, many states now have passed economic nexus sales and use tax statutes (measuring nexus based on the number of transactions or gross revenue from sales rather than physical presence).

Therefore, businesses now must more carefully monitor sales activity to determine filing requirements and potentially register in additional states as a proactive measure.

The Wayfair decision presents several issues for retail auto and recreational vehicle dealers who may exceed the gross revenue thresholds and may be required to establish economic nexus based on a single transaction or a small number of transactions. These dealers also may make smaller sales transactions (lower dollar but higher volume) for parts they ship to out-of-state customers, requiring dealers to monitor the transactional amounts sold into destination states. It often is difficult to predict when such transactions — specifically vehicle sales — may arise, and dealers may be resistant to registering in every state where they have met the legal standard of economic nexus.

Tax specialists can help dealerships review their motor vehicle and parts export sales in order to mitigate liability in case of audit. Please note that the determination of nexus and filing responsibility is independent of determining the taxability of the transactions and triggering nexus results in all transactions (vehicles and parts) potentially being subject to a tax collection responsibility.

Additionally, most states likely will not distinguish between taxable retail sales and wholesale sales for the purposes of measuring gross revenue or transactional activity in determining whether economic nexus is established. The Wayfair case has different impacts for vehicle and parts sales.