

# Dealer

# OVDA

Oregon Vehicle Dealers Association

# Solutions

**December 2019**

*Happy Holidays from your colleagues at  
Oregon Vehicle Dealer Association*



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# Corporate Activity Tax Update

## Corporate Activity Tax Rules Remain Elusive Days Before Implementation

Did you generate more than \$750,000 in GROSS receipts this year? Then the new Corporate Activity Tax will impact you. If not, is it even POSSIBLE that you will generate more than \$750,000 in income in 2020? Then the Corporate Activity Tax will impact you. Read on...

The Corporate Activity Tax that goes into effect on January 1, 2020 taxes any “corporate activity” (business income) in Oregon over \$1,000,000 at a rate of \$250 plus 0.57%. Out of state businesses are taxed on sales in Oregon. Out of state sales by Oregon businesses are not taxed.

Businesses are required to sign up for the tax if your corporate income is more than \$750,000, even if you do not end up paying the tax.

Businesses are allowed to deduct 35% of the higher of either their payroll or their cost of goods from the tax.

The Department of Revenue is tasked with writing the rules to implement the new tax. However, it is not clear when the rules will be adopted. An email from the Department of Revenue to OVDA on November 11, 2019 stated, “[t]he department plans to adopt temporary emergency rules (limited to 180 days) in early 2020.

*[Editor’s note: this is after the law goes into effect.]* Our intention is to provide stakeholders with the drafts of temporary rules [in December] for initial feedback. The first set of temporary rules would be in place January 1, 2020, followed by the next set of temporary rules in February and March. While the temporary rules are in

place, the department will move through the rulemaking process to promulgate permanent rules. Stakeholders will have additional opportunity to provide comments and feedback on these rules during the permanent rule-making process.

As more information becomes available, OVDA will be providing CAT updates by email. If you are not a member of OVDA and you want to ensure you receive these important updates, please join OVDA today.

In any event, impacted Oregon businesses will be stuck collecting the tax using temporary rules, or without rules at all. No Oregon businesses will have time to meet with tax attorneys or CPAs to properly review the rules to prepare for implementing the new tax because no one has seen the rules.

Nearly 900 business taxpayers and tax professionals took part in public forums or participated in video conferences and conference calls this fall as Oregon Department of Revenue (DOR) sought input into the administrative rules for the new Corporate Activity Tax.

On behalf of Oregon dealers, OVDA submitted questions in writing about any potential administrative rules clarifying the two provisions specifically for auto dealers (see related story on page five).

A summary of the conversations during the meetings and other outreach efforts are now available on the Corporate Activity Tax page of DOR website.

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# Corporate Activity Tax Update

## Corporate Activity Tax Rules Remain Elusive Days Before Implementation

(Continued from Page 2.)

The CAT team has also updated its frequently asked questions. The latest addition concerns when businesses will be required to make estimated payments. The FAQ are also located on the CAT page of the DOR website.

The agency has received a number of requests to share a summary of the issues raised in the meetings, video conferences and conference calls. Knowing what questions have been previously asked by stakeholders could prompt others to ask questions which will further inform the rule-making.

Staff is continuing to address many of the questions asked during the tour through forms and instructions, administrative rules, a list of frequently asked questions, and other communications. Anyone with questions, comments or suggestions about the CAT is encouraged to direct them via email to [cat.help.dor@oregon.gov](mailto:cat.help.dor@oregon.gov).

The Oregon Legislature created the Corporate Activity Tax in House Bills [3427](#) and [2164](#) during the 2019 session. DOR has the responsibility to write administrative rules to implement the law, which takes effect January 1, 2020.

The CAT is imposed on businesses for the privilege of doing business in Oregon. It applies to all business entities including those located inside and outside of Oregon. The CAT is not an income tax or a transactional tax, such as a retail sales tax. It is measured on a business's commercial activity—the total amount a business realizes from transactions and activity in Oregon.

If you'd like to sign up to receive information directly from the Department of Revenue, or to read the latest FAQ information on the tax, just go to the CAT [website](#).

## Details on dealer rules in the new CAT still on the drawing board at Dept. of Revenue

As a result of last minute efforts during the Legislative Session, auto dealers in Oregon received two important breaks from the new Corporate Activity Tax.

First, dealers will not be required to include the cost of the tax in their advertised price. The new tax (starting January 1, 2020) can be listed outside the offering price of the vehicle, similar to the title and registration processing fee.

Section 52 (4) of the new tax includes the following language: *"Notwithstanding subsection (1) of this section, a vehicle dealer may collect from the purchaser of a motor vehicle the estimated portion of the tax imposed under this section that is attributable to commercial activity from the sale of the vehicle."*

Requiring dealers to include the tax in the offering price would have placed Oregon dealers at a competitive disadvantage to neighboring states that do not include their sales tax in their offering price. The details on how the tax will be estimated and

disclosed is still unknown even though the tax goes into effective January 1, 2020. It is possible that clarifying rules will not be adopted until weeks or months after the law goes into effect.

Additionally, the following language is included in Section 50: *"(1)(b) 'Commercial activity' does not include: (W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400(9)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;"*

This section relieves dealers from collecting the new tax on certain dealer to dealer transactions, potentially including certain auction sales. However, the *"need to meet a specific customer's preference"* language will need additional clarification before we know the extent of the exemptions. Again, details will follow as soon as they are available.

# Multnomah Tax Update

## Multnomah County to nearly triple vehicle registration fees to finance portion of Burnside Bridge project

From OregonLive.com

Multnomah County commissioners unanimously blessed a plan Thursday to dramatically raise vehicle registration fees to pay a portion of the estimated \$550 million to \$850 million project to replace or seismically retrofit the Burnside Bridge.

A final vote on the fee increase is scheduled for Dec. 5. If approved, annual fees would rise to \$56 on Jan. 1, 2021. The current yearly fee is \$19, less than similar costs in Washington and Clackamas counties.

Motorists aren't billed an annual fee, rather they' pay it once every two years when renewing their vehicle's registration. Drivers are likely unaware of the fee, as it's bundled into existing DMV or DEQ charges when renewing vehicle tags.

While the actual bridge construction is likely years away, commissioners said approving a portion of the financing plan today sends a strong signal that the county is serious about replacing the Burnside Bridge.

Multnomah County Board Chair Deborah Kafoury said the government would look for ways to lessen the financial blow for low-income residents, many of whom, she and other commissioners acknowledged, might not be able to pay the higher cost.

But commissioners said it's critically important that the county move forward quickly with a plan to make the

Burnside Bridge seismically sound. In the event of a Cascadia Subduction Zone earthquake with a magnitude of 9.0, all of Portland's bridges in or around the downtown core are expected to be unusable for weeks, if not months or longer.

The county plans to issue \$270 million in bonds to fund a portion for the bridge project and use the increased car fees to repay that debt. The Metro regional government, which plans to put a \$3.1 billion transportation bond before voters next November, set aside \$150 million for the bridge in its preliminary project list.

Metro is still determining how it will pay for the dozens of projects outlined in the 2020 regional transportation package, but a separate \$59 vehicle registration fee that would apply across all three counties, is one potential revenue source. That fee would be in addition to any existing county charges.

The county would also expect to receive federal support for the Burnside project.

Commissioner Lori Stegmann called the proposed fee increase "a small price to pay" to protect lives and property across the region.

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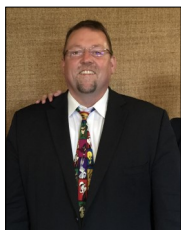
## IF NOT YOU, WHO? IF NOT NOW, WHEN?

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# Dealer Industry Leadership

## Your Oregon Vehicle Dealer Assn Board

The OVDA Board is comprised of active dealers. You likely see them at the auctions. They are volunteering some of their time to ensure the auto industry has a strong voice in Oregon. Would you like to be an industry leader? We are especially looking for dealers in southern, central and eastern Oregon, and for dealers who represent the large minority community of dealers. Are you passionate about the auto industry? Are you willing to donate a little of your time to improve the business in which you work? If you would consider joining our board, please email [OVDA@ordealers.com](mailto:OVDA@ordealers.com) or call 503-399-9199. **If you have already sent an email indicating your interest, we will be in touch. You only need to send one.** Thank you for your interest.



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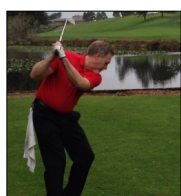
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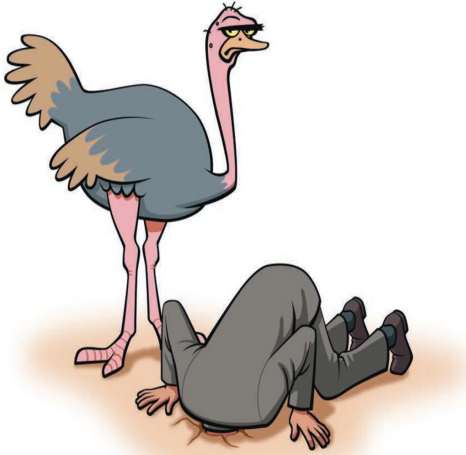
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# The CARLAWYER



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## The CARLAWYER

By Nicole F. Munro and Thomas B. Hudson

The only thing slower than Hurricane Dorian is August in Washington, D.C. With all of our elected representatives back home tending to the really important business – getting themselves re-elected – there is next to nothing to report. Nevertheless, here's our monthly article on selected legal developments we think might interest the auto sales, finance, and leasing world. This month, the action involves only the Federal Trade Commission and the Consumer Financial Protection Bureau. As usual, our article features the "Case of the Month" and our "Compliance Tip".

Note that this column does not offer legal advice. Always check with your lawyer to learn how what we report might

apply to you, or if you have questions.

### Federal Developments

**FTC Announces Revised National Do Not Call Registry Fee Structure.** On August 23, the FTC announced a revised fee structure for entities accessing the National Do Not Call Registry, effective October 1, 2019. On that date, the annual fee to access the Registry will increase from \$63 to \$65 per area code of data. The cost to access data for six months rather than an entire year will remain at \$32 per area code. The charge to access the entire Registry, covering all area codes nationwide, will increase to \$17,765, up from the current figure of \$17,406. The first five area codes will remain free, and organizations that are exempt from the Do Not Call rules, such as some charitable organizations, may

obtain the entire list for free.

**CFPB Extends Comment Period on Proposed Debt Collection Regulation.** The CFPB extended the comment period on its proposed debt collection regulation by 30 days to September 18, 2019. The proposed rule implementing the Fair Debt Collection Practices Act focuses on the substance, time-and-place requirements and restrictions on consumer communications.

The CFPB acknowledged receiving requests from consumer advocates and an industry trade group for an extension of 60 to 90 days to allow the parties to conduct "additional outreach to relevant constituencies and to properly address the many questions presented in" the proposed rule. But the Bureau appears to be focused on issuing the rule and

(Continued on Page 11)

# DMV Information Update

## Oregon will no longer accept Washington dismantler bill of sale instead of vehicle title

SALEM – Oregon DMV will no longer accept a dismantler's bill of sale from the state of Washington in place of a vehicle title when applying for a title in Oregon as of Oct. 21, 2019.

Starting Oct. 21, if you wish to apply for an Oregon vehicle title for a vehicle from Washington, you must submit a Washington title. Oregon will reject any application with a Washington dismantler's bill of sale in lieu of a title. Oregon DMV will reject applications submitted by mail with a dismantler's bill of sale if they are post-marked Oct. 21 or later.

Washington does not issue salvage titles. In Washington, the legal owner of a totaled vehicle, or the insurance company, must surrender the title within 15 days of a vehicle's destruction or settlement of its status as totaled. The vehicle may be subsequently sold with a notarized bill of sale – typically for dismantling.

Oregon DMV has been accepting the Washington dismantler's bill of sale as an ownership document in lieu of a title or salvage title when the bill of sale states, "the title was surrendered to the Department of Licensing in accordance with RCW 46.12.70 (Washington law)" or similar language. However, dismantlers' bills of sale are not state-issued and are not secure documents.

As of Oct. 21, Oregon will accept a Washington dismantler's bill of sale under only one condition: It will be accepted in lieu of title as an ownership document only when submitted with an Oregon Dismantler's Vehicle Notice to Driver and Motor Vehicle Services, Form 270, for the purpose of adding a dismantler stock indicator on the vehicle record.

For information on how to obtain a Washington title, the customer can review the Washington Department of Licensing website at <https://www.dol.wa.gov/vehicleregistration/salvageabandon.html>.

If you have any questions regarding these changes, please call DMV Customer Assistance at 503-945-5000 or in Portland at 503-299-9999, or call the DMV number listed in your local directory.

Any time you need to visit Oregon DMV, please first check [www.OregonDMV.com](http://www.OregonDMV.com) to find business hours, locations and wait times for most offices, and to make sure you have everything you need before your visit. You also can do some DMV business from home at OregonDMV.com.

### OVDA Lobbyist Appointed to EV Advisory Committee

OVDA Lobbyist Darrell Fuller has been appointed to serve on the Oregon Clean Vehicle Rebate Program Advisory Committee. The committee reviews process and policy decisions related to two rebates for the purchase or lease of certain vehicles.

The Standard Rebate is for the purchase or lease of a new electric motorcycle or motor vehicle. The Charge Ahead rebate is for qualifying low-income purchasers of new or used battery-electric or plug-in electric vehicles.

"The advisory committee provides DEQ and ODOR staff with real world feedback on how to ensure these rebates are available at dealerships of all sizes across the state," said Fuller.



# DMV'S PROCESS TO DETERMINE MILES PER GALLON FOR VEHICLES

## DMV'S PROCESS TO DETERMINE MILES PER GALLON FOR VEHICLES (Information for Vehicle Dealers)

### How Does DMV Determine MPG?

- DMV's system automatically identifies a vehicle's combined MPG rating based upon the data contained within the manufacturer's VIN using VIN decoder software.
- When the VIN decoder is not able to decode the VIN, it will default to 0 (and the transaction will be subject to the lowest fee in the 0-19 MPG range).
- If the system defaults the vehicle's combined MPG to 0, the VIN will be run again at each renewal until an MPG value is entered into the system. This means a vehicle's combined MPG and MPG tier (and fee) could be updated at subsequent renewals.
- A customer cannot change their MPG; the standard we use is the EPA combined MPG rating when the vehicle is new. • DMV will allow a vehicle dealer to provide DMV with a vehicle's combined MPG, which can be entered into the system at DMV or through EVR.
- January 1, 2020, programming will be complete to update DMV's Fee Estimator Tool, which will run the vehicle's VIN through DMV's VIN decoder software to provide the proper MPG and MPG range and fee. The Fee Estimator Tool will also determine if a vehicle is enrolled in OReGO and adjust the registration fee based on that status.

### How Does a Dealer Determine MPG?

- If a dealer is enrolled in EVR, the system will automatically decode the vehicle's VIN and provide the combined MPG (after 1/1/2020). If the VIN decoder is not able to decode the VIN, the transaction will default to 0 and the lowest fee range. Alternatively, the dealer is permitted to enter a combined MPG rating into the system.
- If a dealer is not enrolled in EVR, they may determine the vehicle's combined MPG rating by using the EPA website: [fuelconomy.gov](http://fuelconomy.gov). The dealer may need to determine the engine size and transmission type to obtain the proper combined MPG of a vehicle. This may be most useful on used cars, as the information provided by the manufacturer may not be available to the dealer.
- New Application for Title and Registration forms (735-226) and Application for Replacement Title forms (735- 515) will include an MPG box in the grey area where the dealer may write in the combined MPG for DMV HQ entry.
- January 1, 2020, programming will be complete to update DMV's Fee Estimator Tool, which will run the vehicle's VIN through DMV's VIN decoder software to provide the proper MPG and MPG range and fee. The Fee Estimator Tool will also determine if a vehicle is enrolled in OReGO and adjust the registration fee based on that status.
- If a dealer is unable to determine MPG using [fuelconomy.gov](http://fuelconomy.gov) (after January 1, 2020), they may call DMV Customer Assistance and a telephone agent may assist them using the Fee Estimator Tool.

\*Excerpt from letter from Oregon DMV

# DMV Information Update

## Some Oregon vehicle fees will be based on mpg starting in 2020

SALEM -- New Oregon vehicle registration, title and trip permit fees will take effect Jan. 1, 2020, as part of "Keep Oregon Moving," the biggest transportation investment in state history.

Under this transportation funding package the Oregon Legislature passed in 2017, passenger vehicle registration fees will be based largely on the vehicle's fuel efficiency rating. Drivers of more efficient vehicles will pay more to register and renew their tags so they contribute more for use of the roads. That's because these drivers are contributing much less (or nothing) in fuels tax while driving just as much.

Drivers of electric vehicles and passenger cars that get 40 miles per gallon or better will have a choice. They can pay a full fee for two or four years up front, or they can pay a lower fee and a monthly per-mile charge for miles driven in Oregon if they join OReGO.

Oregon residents with vehicle tags expiring on or after Jan. 1, 2020, will see these new fees in their renewal reminders starting this month. If your vehicle's tags expire after Dec. 31, 2019, the new fee will apply even if you pay early. Registration fees are based on the vehicle registration renewal date, not the date that the fee is paid.

Here is a summary of the new fees for passenger vehicles (new vehicles are registered for four years at first, then every two years):

### Most passenger vehicles

<u>Fuel economy</u>	<u>4 years</u>	<u>2 years</u>
0-19 mpg	\$244	\$122
20-39 mpg	\$264	\$132

### High-mileage passenger vehicles

<u>Fuel economy</u>	<u>4 years</u>	<u>2 years</u>
40+ mpg NOT in OReGO		
	\$304	\$152
40+ mpg enrolled in OReGO		
	\$172	\$86
Electric NOT in OReGO		
	\$612	\$306
Electric enrolled in OReGO		
	\$172	\$86

Drivers can compare what they would pay in OReGO versus what they currently pay in gas tax by plugging their car's mpg rating and the typical number of miles they drive into the OReGO calculator at [www.MyOReGO.org/calculator](http://www.MyOReGO.org/calculator).

Drivers can contact OReGO customer service at (503) 986-7827 or [myOReGO@odot.state.or.us](mailto:myOReGO@odot.state.or.us), 8 a.m. to 5 p.m. Monday through Friday to learn more or for help signing up.

DMV will update its fee information at [OregonDMV.com](http://OregonDMV.com) as of Jan. 1, 2020.

Fees for commercial trucks and buses also are going up under this transportation funding program. For more information on commercial vehicle fees, visit the Motor Carrier Transportation Division at [www.Oregon.gov/ODOT/MCT](http://www.Oregon.gov/ODOT/MCT).

Vehicle registration fees, title fees and other motor vehicle-related fees, such as fuels taxes and motor carriers' weight-mile taxes, are set by the Legislature and help support Oregon's transportation system – statewide and at the local levels. The increased fees are part of the major funding package to improve our state's transportation system and to strengthen our economy.

### Here are some transportation system investments the fees will support:

- \* Highway maintenance, preservation, seismic upgrades and safety, including specific construction projects across the state.
- \* Increased funding for road maintenance and repairs in small cities and counties.
- \* A Safe Routes to School infrastructure program to reduce barriers and hazards for children walking or bicycling to and from school.
- \* Economic benefits by sustaining jobs, keeping freight moving, and providing a boost to local communities across the state.

For upcoming transportation projects in your area, visit [www.oregon.gov/ODOT](http://www.oregon.gov/ODOT).

Any time you need to visit a DMV office, first check [www.OregonDMV.com](http://www.OregonDMV.com) to find office hours and locations, and to make sure you have everything you need before your visit. You also can do some DMV business from home, such as vehicle registration renewals, at [OregonDMV.com](http://OregonDMV.com).

# Response to Question on HB3427

## IMPACT ON ALL BUSINESSES

Oregon's new Corporate Activity Tax goes into effect on January 1, 2020. Basically, it adds a new tax on gross income over \$1,000,000. Or, in other words, the first \$1,000,000 of receipts are exempt from the tax. So, if your gross is less than \$1,000,000, this new tax will not impact you.

The tax is \$250 plus 0.57% of gross receipts over \$1,000,000. However, businesses are allowed to deduct 35% of payroll or 35% of the cost of goods sold, whichever is higher. So even if you top \$1,000,000 in gross receipts you may not owe anything.

You are required to register to pay the tax (even if you end up not owning anything) once your business reaches \$750,000 in gross receipts. So, even if you don't pay the tax, you may need to register with the Department of Revenue -- just in case. If your gross receipts exceed \$1,000,000 you MAY owe \$250 plus 0.57% of your gross income over \$1,000,000. The reason I wrote "MAY" is because businesses with income over \$1,000,000 are allowed to deduct 35% of their payroll or 35% of the costs of their goods sold (which ever if higher) from the \$1,000,000 threshold. So, you may not owe a CAT even if your business exceeds \$1,000,000 in gross receipts. It depends. By the way, the tax only applies to sales in Oregon. So, if you are an out-of-state business, you pay the tax if your sales inside Oregon exceed \$1,000,000. Similarly, if you are an Oregon business, sales to customers outside Oregon do not count towards the \$1,000,000 threshold. So, you don't count sales to customers outside Oregon.

## HYPOTHETICAL

Let me offer a hypothetical example: Let's suppose your dealership generates \$1,500,000 in gross sales in 2020. You are required to register with the Department of Revenue once you reach \$750,000.

If the cost of your goods sold (the cost of purchasing vehicles for resale) is \$1,000,000, then you can deduct 35% of that cost -- or \$350,000 -- from the \$1,500,000. That gives you qualifying Corporate Activity of \$1,150,000. The first \$1,000,000 is exempt. So, you will owe \$250 plus 0.57% on \$150,000, or \$1,105.00 (\$250 + \$855). Clear as mud.

## WHEN YOU OWE

Generally speaking, you are required to pay the CAT quarterly. However, the Department of Revenue just updated their Q&A yesterday (11/25/2019) to indicate that businesses which estimate their CAT will be less than \$5,000 do not need to pay the tax quarterly. Instead, if you anticipate your CAT to be less than \$5,000, then you need only pay the tax by April 15 of the following year. Based on ODOR projections, businesses with gross corporate activity below \$1,833,245 will not need to make quarterly payments on the CAT (see the Q&A on the ODOR website at the link above).

## DEALER SPECIFIC PROVISIONS

HB 2164 added two dealer-specific provisions to the Corporate Activity Tax. They are: Section 50: ***"(1)(b) 'Commercial activity' does not include: (W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400(9)(a)(B) from the sale or other transfer of a motor***

***vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;"*** and Section 52

***(4): "Notwithstanding subsection (1) of this section, a vehicle dealer may collect from the purchaser of a motor vehicle the estimated portion of the tax imposed under this section that is attributable to commercial activity from the sale of the vehicle.";***

OVDA has asked the Department of Revenue for specific guidance on how these two provisions will be implemented. However, to date we have not received any help from the Department. My best guess is that a dealer who anticipates paying a CAT can add the estimated cost of the tax to the sale of a vehicle outside the advertising price, much like the administrative fee. However, how a dealership calculates the tax is still unknown.

## CONCLUSION

There is still much we do not know about the new Corporate Activity Tax. OVDA will continue to vigorously pursue answers to the questions which will impact businesses in general, and dealers specifically. Unfortunately, there are many more questions than answers right now. The best way to stay well informed going forward is to be a member of OVDA. If you are not a member, please join today. If you are a member, thank you. Your membership allows OVDA to have eyes, ears and a voice at the Capitol building in Salem. Click [here](#) for an update on the tax from our friends at NFIB.

# The CARLAWYER

## (Continued from Page 6)

allowed only 30 additional days, indicating that the Bureau is not interested in delaying the rulemaking. Accordingly, parties have until September 18, 2019, to comment on the proposed rulemaking.

### Case of the Month

You are going to complain that the case we discuss this month has nothing to do with car credit, and you'll be right. The case does, however, have some very interesting lessons for a dealership facing a lawsuit alleging violations of state and/or federal consumer laws. Those laws almost always contain a definition of the term "consumer," that serve to limit claims that may be brought under them. Take a look at how that plays out in this case.

On behalf of Unifund CCR, LLC, Kohn Law Firm, S.C., sued John Burton to collect a credit card debt. Burton denied knowledge of the account.

Burton then sued Kohn and Unifund in federal district court, alleging that they violated the Fair Debt Collection Practices Act and the Wisconsin Consumer Act by suing him without first providing him notice of his right to cure the default. The state court ultimately dismissed the action against Burton based on his denial that he was the individual who had incurred the underlying debt.

The federal district court granted summary judgment for Kohn and Unifund on the FDCPA and WCA claims, finding that Burton failed to present sufficient evidence that the debt incurred on the credit card account was for personal, family, or household purposes, which is required to state a claim under those statutes. Burton appealed.

The federal appellate court affirmed the trial court's decision that Burton failed to create a triable issue of material fact that

the credit card debt was a consumer debt. The appellate court first noted that a plaintiff can maintain an FDCPA claim, even if he contends that the underlying debt is not his, by showing that the debt collector treated him as a "consumer" allegedly owing a consumer debt. However, in such a case, the plaintiff must offer evidence to establish that the debt was a consumer debt incurred for personal, family, or household purposes. Next, the appellate court rejected all of Burton's arguments that the credit card debt was a consumer debt.

First, Burton argued that his own statements sufficed to show that this was a consumer debt. The appellate court found that, during the state court action, Burton represented that he had never applied for, had no knowledge of, and made no purchases on or payments toward the credit card account at issue. The allegation in his federal complaint stating that "[t]o the extent that [he] entered into a credit agreement ..., such agreement was entered into for personal, family or household purposes" was insufficient evidence to show that the debt was a consumer debt.

Second, Burton argued that Kohn and Unifund's treatment of the debt as a consumer debt was evidence that the debt was, in fact, a consumer debt. The appellate court found that the inclusion of FDCPA disclaimers in Kohn and Unifund's debt collection letters was insufficient evidence that the debt was a consumer debt because debt collectors may be exercising caution and including disclaimers on all communications with debtors simply to avoid any FDCPA liability.

The appellate court also found that bringing the state court action against Burton in his personal capacity was also insufficient evidence that the debt was a consumer debt because an individual can be sued in a personal capacity for a business debt.

In addition, the appellate court found that it was of no importance that the collection letters were sent to Burton's home address because an individual can conduct business activities from his personal residence.

Third, the appellate court found that Kohn and Unifund's advertisement of their consumer debt collection services on their websites was not sufficient evidence that the debt they attempted to collect in this case was a consumer debt.

Fourth, the appellate court found that Burton could not rely on an email sent by the credit card issuer's employee that described the underlying account as a "consumer account" because the email was inadmissible hearsay.

Finally, Burton argued that the billing statement listing purchases made with the credit card demonstrated that the debt at issue was a consumer debt. However, the appellate court found that the billing statements did not provide enough information for a trier of fact to conclude that the purchases were made for personal, family, or household purposes.

Here, the creditor successfully avoided liability by arguing that the plaintiff did not meet its burden of showing that the debt at issue was a consumer debt.

Some laws and regulations contain other helpful definitions and limitations that can serve to protect your dealership. As examples, some laws do not apply to credit extended to businesses or corporations, while others don't apply if the underlying transaction involved a dollar amount above a stated ceiling.

In short, just because a buyer claims you have violated a consumer law or regulation, it's not necessarily so!

*Burton v. Kohn Law Firm, S.C.*, 2019 U.S. App. LEXIS 23802 (7th Cir. (E.D. Wis.) August 9, 2019)

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### This Month's *CARLAWYER*® Compliance Tip

The Case of the Month turned on whether a debt was a "consumer" debt giving rise to a right by the debtor to make claims under federal consumer protection laws. Does your dealership's compliance officer know the various definitions, exemptions and limitations that are contained in the federal and state laws that apply to your dealership? A compilation of that information would be a snap for your lawyer to assemble and would be a valuable addition to your compliance library.

So, there's this month's ridiculously skimpy article. See you next month, hopefully with a meatier one!

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