

Dealer

Solutions



January 2020

1 Hour Edition

They're baaaaack!

- ☒ **2016 / THREE-TIERED INCREASE IN MINIMUM WAGE**
- ☒ **2017 / NEW CAR SALES TAX**
- ☒ **2018 / SMALL BUSINESS PASS-THROUGH TAX**
- ☒ **2019 / CORPORATE ACTIVITY TAX**
- ☐ **2020 / CAP AND TRADE**

In this Issue

Corporate Activity Tax rules

Second attempt for a repair shop bond

Potential increase in the new car sales tax

Change coming for Secure Odometer

Table of Contents

Corporate Activity Tax Update.....	2
Dealer-to-Dealer CAT Exclusion Form.....	3
OVDA Leadership.....	5
Repair shop bond under consideration.....	6
Cap and Trade bill will highlight February Session.....	7
Secure Odometer requirement may change.....	8
Some Oregon Registration Fees Based on MPG.....	9
New vehicle sales tax may increase.....	10

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Corporate Activity Tax Update

Corporate Activity Tax a work in progress even after you have to start collecting it...

Oregon's new Corporate Activity Tax (CAT) begin on January 1, 2020. So, if you anticipate generating more than \$750,000 in "Corporate Activity" (essentially GROSS receipts), then this impact your business and you should be paying attention

available. Unfortunately, many questions remain unanswered as the government's tax experts continue to wrestle with how to implement many portions of the new law. To peruse the currently adopted CAT Administrative Rules, just click here:

The best way to stay up to date is to sign up for email updates from the Oregon Department of Revenue. You can read Frequently Asked Questions (including some that are dealer-specific) and sign up [here](#).

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 activity 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 Oregon Department of Revenue is rolling our temporary and permanent rules related to the CAT as they are



OAR 150-317-1410

Receipts from the sale or transfer of a motor vehicle between motor vehicle dealers are excluded from commercial activity, provided that the transfer occurs for the purpose of resale and is based on the transferee's need to meet a specific customer's preference.



[CAT Administrative Rules](#)

One provision of the new tax specifically exempts some dealer to dealer trades from the definition of Corporate Activity. The exemption only applies if the dealer to dealer trade or sale results from a dealer's need to fulfill a specific customer's preference.

To read the Administrative Rules drafted specifically on this provision just click here:

[Dealer to Dealer Exclusion](#)

The Department of Revenue has gone so far as the create a SAMPLE form dealers can use to keep records on nonqualifying dealer to dealer transaction.

To download a copy of the ODOR-created exemption form just click here:

[Sample Dealer to Dealer Transfer Exclusion Form](#)

A copy of the form is also included on pages 3 and 4 of this edition of **Dealer Solutions**.

Notice of Motor Vehicle Transfer for Customer's Preference

For purposes of the Corporate Activity Tax (CAT), motor vehicle dealers may exclude receipts realized from the sale or transfer of a motor vehicle to another vehicle dealer, provided that certain requirements are met. In order to qualify for the exclusion, the transaction must meet **all** of the following requirements:

1. The transferor and transferee must be licensed motor vehicle dealers.
2. The transfer must be made for the purpose of resale by the transferee vehicle dealer.
3. The transfer must be based upon the transferee vehicle dealer's need to meet a specific customer's preference.

Because both the transferee and transferor may be eligible to claim the exclusion, both motor vehicle dealers must retain documentation demonstrating that the vehicle transfer meets the applicable requirements. Any document will suffice, provided that it contains the following information:

1. Name, address, dealer license number, and federal tax identification number for both the seller and the purchaser.
2. Vehicle description, including Vehicle Identification Number (VIN), if one exists.
3. A statement that the vehicle is being transferred for resale in order to meet a specific customer's preference.
4. The signature of the transferee vehicle dealer, the dealer's employee, or authorized representative of the dealer.
5. Date of execution of the document.

The form below is provided by DOR as an example. **Motor vehicle dealers are not required to use this form. Any document containing all of the required information is sufficient.**

Do not submit the resale certificate documentation to the Department of Revenue when filing a return. Retain the documentation for your records. You may be asked to provide documentation to verify the transfer meets the exclusion requirements.



OREGON CORPORATE ACTIVITY TAX

Notice of Motor Vehicle Transfer for Customer's Preference

TO BE COMPLETED AND SIGNED BY THE MOTOR VEHICLE DEALER RECEIVING THE QUALIFYING MOTOR VEHICLE

Transferee Dealership Name

Dealership Federal Tax Identification Number

Dealership License #

Licensing Jurisdiction

Transferee Street Address

City, State, Zip Code

Year/Make/Model and VIN (if available)

- ☐ I certify that that the transfer of the above listed motor vehicle(s) was for the purpose of resale, and was based on my dealership's need to meet a specific customer's preference.

Signature of Dealer, Employee or Representative

Date

TRANSFEROR MOTOR VEHICLE DEALER

[Click here to enter text.](#)

Transferor Dealership Name

Dealership Federal Tax Identification Number

Dealership License #

Licensing Jurisdiction

Transferor Street Address

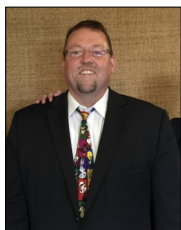
City, State, Zip Code

This form shall be retained by both dealers and shall not be submitted to the Oregon Department of Revenue as part of a tax return.

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 or call 503-399-9199. Thank you for your interest.



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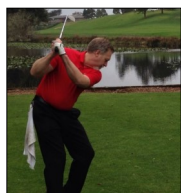


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2020 February Legislative Session



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Auto repair shops take a second stab at a bond

During the 2018 Legislative Session, lawmakers passed House Bill 4087 which imposed a \$20,000 bond on mechanical auto repair shops if they used a mechanic's lien. Only shops that use mechanic's liens would be required to purchase the bond.

The bill resulted from consumer protection attorneys who complained to legislators that some customer vehicles were being held hostage by unscrupulous repair shops. The attorneys said they were reluctant to

take cases because they rarely got paid, even when they won.

They proposed a much more costly and significant auto repair shop regulation plan in 2017, which failed.

As a result of negotiations, the consumer lawyers agreed to the much more narrow bond, specifically for shops using the mechanic's lien.

Unfortunately, the companies which write bonds — for dealers, dismantlers and other businesses — indicat-

ed they would not issue the newly required auto repair shop bonds due to the way the new law was crafted. As a result, the bond was suspended by the 2019 Legislative Assembly while more work was done.

Now, the Legislature is considering House Bill 4087, which, if passed, will impose a \$20,000 bond on mechanical repair shops, but only if they place liens on customer's vehicles. To read the proposal, just click here:

[House Bill 4058](#)

2020 February Legislative Session

The most significant (and controversial) issue facing lawmakers this month is Cap and Trade

On Monday, February 3, Oregon lawmakers convened in Salem for their “short” (35 days) session. They will deal with a myriad of issues from budget tweaks to mundane corrections in existing statutes. But they will take on some pretty big issues, too. The biggest will be trying to pass a Cap and Trade bill to begin dramatically curtailing the production of atmospheric carbon from everything from cars to large industrial polluters.

House Bill 2020, the Cap and Trade bill during the “long” (six months) session in 2019 failed when Senate Republicans literally left the state to prevent their Chamber from having a quorum of members to pass the bill. They are threatening to walk away again if necessary.

But if the Legislature doesn’t pass a Cap and Trade bill in February, environmental groups have promised to take the issue to the ballot with an initiative petition.

Republican lawmakers in the Senate and House have indicated a willingness to work on Cap and Trade legislation, but only if the proposal is sent to voters for final approval. If they Legislatively-written version is too “soft” for environmental groups, it is possible there will be two different versions of Cap and Trade on the ballot when we vote in November.

For the short session there are at least three different version of Cap and Trade under review. They are:

[House Bill 4159](#)
[Senate Bill 1530](#)
[Senate Bill 1574](#)

Most in the Capitol believe Senate Bill 1530 will be the primary vehicle for moving Cap and Trade. If you are curious about what people are saying about the proposal, you can read all of the written testimony provided to the committee by clicking here:

[SB1530 written testimony](#)

Any Cap and Trade proposal will have a huge impact on transportation and transportation-related costs. One of the clear goals is to discourage the ownership and use of personal motor vehicles, which will ultimately impact dealers. Furthermore, the cost of traditional fuels — gasoline and diesel — will increase dramatically over time.

Regardless of where you stand on Cap and Trade, your legislators want to hear from you. And, as a vehicle dealer, you are likely better informed on this issue than many of your fellow citizens. If you’d like to contact your state Senator and your state Representative, so they know what you think about Cap and Trade, you can get their contact information by simply putting your home address in this link:

[Find my Legislator](#)

If your dealership is not located near your home, you could also put your dealership address in the link above. Your dealership could be in a different district. While you would not be a constituent of the legislators associated with your dealership address, those lawmakers would still be interested in hearing from you since you have a business in their district.



2020 February Legislative Session

Secure odometer requirement may increase from 10 years to 20 years, under new proposal

The bill is thirty-one pages long. It offers local governments additional authority to set speed limits, it includes Portland International Airport under the legal definition of a “public building”, it restricts firearms from being carried in public buildings. And, it changes the secure odometer reporting requirement from 10 to 20 years.

Read the proposed change here:

[House Bill 4036](#)

According to Tom McClellan, head of Oregon’s DMV office, this change contained in Section 14 (its on page 12) of House Bill 4036 was not their idea. Rather, the change from 10 years to 20 years is the result of a change in the requirements at the Federal level. Oregon is merely con-

forming our state laws to the new Federal law.

But after proposing the change contemplated in House Bill 4036, DMV indicates they plan to amend (change) that portion of the bill. Rather than make the change from 10 years to 20 years in statute, DMV plans to propose an amendment that will remove the time period from the statute altogether. It will be replaced with new language giving DMV authority to set the time period through administrative rules. Making this change will allow DMV to make similar changes in the future without seeking permission from the Legislature.

OVDA lobbyist Darrell Fuller said this change makes sense. “If the Federal government makes a change, we have to follow suit. So there really

isn’t a reason for the Legislature to be involved in this decision. DMV should simply be able to conform with Federal law when it changes,” he said.

Fuller said OVDA will work with DMV on the timing of the change from 10 years to 20 years, to ensure the least amount of disruption to dealers.

“We have some concerns on how the change is implemented. We have questions about vehicles caught in limbo when this change occurs, Fuller suggested. “We’re supporting the change from a statutory number to an administrative rule with the number. This provides DMV with greater flexibility to ensure the transition is done in consultation with dealers.”

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

Join OVDA today and protect your livelihood by being a part of something that is already making a difference for your dealership every day. Join at www.ordealers.com, call 503-399-9199, or email OVDA@ordealers.com for details.

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.

Drivers can contact OReGO customer service at (503) 986-7827 or 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 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.

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.

Any time you need to visit a DMV office, first check 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.

2020 February Legislative Session

Lawmakers pass new vehicle “privilege tax” in 2017, consider increasing it in 2020

In 2017, Oregon lawmakers passed a new tax on the sale of new motor vehicles (defined as a vehicle titled for the first time in Oregon with less than 15,000 miles). They couldn't actually tax the sale of vehicles (the Oregon Constitution would have dedicated that money to the Highway Trust Fund). To get around the constitution, lawmakers called their new tax a tax on the “privilege” of selling new vehicles in Oregon. This allowed them to avoid constitutional issues.

The money collected from the privilege tax of 0.50 percent (and a corresponding “use” tax on new vehicles bought out of state and titled in Oregon) is used to fund a grant program to encourage people to purchase hybrid and battery-electric vehicles.

Now, lawmakers are considering adding an addition to the privilege tax. To read their new proposal click here:

[House Bill 4151](#)

How much the tax will increase is unknown. The bill currently has a blank line for the amount of the tax increase.

But that's not the only bad part of this proposal. HB4151 imposes the tax on new vehicles based on where



they will be registered. Only vehicles registered in a Metropolitan Service District will be required to pay the additional

tax. So, regardless of your dealership location, you will need to know whether or not your customer lives in a metropolitan service district prior to selling them a newer vehicle.

The money from the tax will be used to, “accelerate transportation electrification and to engage in grid modernization efforts that support transportation electrification.”

THE GOLDEN RULE:

HE WHO HAS THE GOLD MAKES THE RULES.

The Oregon Vehicle Dealer's Association has a campaign fund. We use donations from dealers to support candidates who: support a free market, lower taxes, fewer rules, and government getting out of the way of small businesses trying to grow.

Will you help OVDA by making a donation today?

Call 503-399-9199 or email OVDA@ordealers.com for details or to

ODOR Road Trip

SALEM - The Oregon Department of Revenue will host a series of meetings across the state in March to provide information to business taxpayers and tax professionals about the administrative rules for Oregon's new Corporate Activity Tax.

Department representatives used input

March 2 on the campus of Central Oregon Community College. Meetings on the east side of the state are set for March 3 in Ontario at Treasure Valley Community College and March 4 in La Grande at Zabel Hall on the campus of Eastern Oregon University. The La Grande meeting is scheduled for 10 a.m. to 11:30 a.m.

0.57% tax on gross receipts greater than \$1 million after subtractions plus \$250, beginning Jan. 1. It is expected to generate \$1 billion a year to boost funding for public schools.

Those who are unable to attend but want to provide input may email questions

or comments

to cat.help.dor@oregon.gov. The department is planning a series of conference call meetings for out-of-state taxpayers and Oregon stakeholders who are unable to attend the in-state meetings. Those meetings will be scheduled once the in-state tour is complete.



collected from stakeholders during a 12-stop tour in fall 2019 in prioritizing and writing the rules. March's meetings will include a presentation and discussion of the initial temporary rules - the last of which will be filed with the Secretary of State on March 1.

"Our CAT team will personally engage our taxpaying communities in March to provide important compliance information. We consistently strive to help taxpayers comply with the law. The CAT team will also solicit feedback on the temporary rules completed to date," said Nia Ray, director of the Oregon Department of Revenue.

The 13-city tour kicks off in Bend on

Additional meetings are planned in The Dalles, Klamath Falls, Ashland, Eugene, Gresham, Coos Bay, Lincoln City, Seaside, Beaverton and Keizer.

House Bill 3427 created Oregon's Corporate Activity Tax and granted DOR the responsibility of writing rules to implement it.

All of the rules will be filed as temporary rules with the permanent rule process scheduled to begin April 1. The timing will allow business taxpayers and tax professionals to provide comment on the temporary rules during the upcoming meetings in March, as well as during the public comment period.

The Corporate Activity Tax imposes a

ODOR Road Trip Schedule



Corporate Activity Tax

March Education Tour Schedule

Monday, March 2

6 to 7:30 p.m., Science 190, Central Oregon Community College, 2600 NW College Way in Bend.

Tuesday, March 3

6 to 7:30 p.m., Weese Building, Room 110, Treasure Valley Community College, 650 College Blvd in Ontario.

Wednesday, March 4

10 to 11:30 a.m., Zabel Hall, Eastern Oregon University, 1 University Blvd in La Grande.

Wednesday, March 4

6 to 7:30 p.m., Lecture Hall, Building 2, Columbia Gorge Community College, 400 Scenic Drive in The Dalles.

Monday, March 9

6 to 7:30 p.m., Klamath Community College, Conference Center, Room 7, 7390 S Sixth St in Klamath Falls.

Tuesday, March 10

6 to 7:30 p.m., Stevenson Union, Room 323, Southern Oregon University, 1250 Siskiyou Blvd in Ashland.

Wednesday, March 11

6 to 7:30 p.m., Center for Meeting and Learning, Room 102, Lane Community College, 4000 E 30th Ave in Eugene.

Thursday, March 12

6 to 7:30 p.m., Visual Arts Theater, Mt. Hood Community College, 26000 SE Stark St in Gresham.

Monday, March 16

11 to 12:30 p.m., Lakeview Rooms E and F in Empire Hall, Southwestern Oregon Community College, 1988 Newmark Ave in Coos Bay.

Monday, March 16

6 to 7:30 p.m., Lincoln City Cultural Center, 540 NE Hwy 101 in Lincoln City.

Tuesday, March 17

6 to 7:30 p.m., Auditorium, Portland Community College Rock Creek campus, 17705 NW Springville Road in Portland.

Wednesday, March 18

7 to 8:30 a.m., Riverside Room B, Seaside Convention Center, 415 First Ave in Seaside.

Thursday, March 19

6 to 7:30 p.m., Iris Room, Keizer Community Center, 930 Chemawa Road NE in Keizer.

Car Lawyer

The CARLAWYER®

By Nicole F. Munro and Thomas B. Hudson

A late Happy Groundhog Day 2020! Punxsutawney Phil could not find his shadow, so we're in for an early spring. Or so the legend goes. We'll see.

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 the Consumer Financial Protection Bureau and the Federal Trade Commission. 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

What Does "Abusive" Mean, Anyway? On January 24, the CFPB issued a policy statement to provide clarification on how it will apply the Dodd-Frank Act "abusiveness" standard in supervision and enforcement matters. [The DFA](#) prohibits a provider of consumer financial products or services from engaging in unfair, deceptive, or abusive acts or practices.

The statement is intended to address uncertainty about the scope and meaning of the term "abusiveness" under the Act. The CFPB will apply the following principles during supervision and enforcement matters immediately. First, the CFPB intends to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh the benefits to consumers.

Second, the CFPB will generally avoid challenging conduct as abusive that relies on all or nearly all of the same facts that the Bureau alleges are unfair or deceptive. Where the CFPB nevertheless decides to include an alleged abusiveness violation, it intends to plead such claims in a manner designed to clearly demonstrate the nexus between the cited facts and the Bureau's legal analysis of the claim. In its supervision activity, the CFPB similarly intends to provide more clarity as to the specific factual basis for determining that a covered person has violated the abusiveness standard.

Third, the CFPB generally does not intend to seek certain types of monetary relief for abusiveness violations where the covered person was making a good-faith effort to comply with the abusiveness standard.

FTC Ups the Ante. The FTC has adjusted the maximum civil penalty dollar amounts for violations of 16 provisions of federal law. Commission Rule § 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the FTC, while the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 directs agencies to implement annual inflation adjustments based on a prescribed formula. As directed by the FCPIAA, the FTC has issued adjustments to increase certain maximum civil penalty amounts to address inflation since its prior 2019 adjustment. The FTC Act does not provide for civil penalties for unfair or deceptive acts and practices unless the defendant is already under an administrative order or has actual knowledge that the FTC has determined a specific practice to be UDAP in a prior litigated order.

Car Lawyer Cont.

The maximum civil penalty amounts for violations of the FTC Act's sections on UDAP have increased as follows: (1) Section 5(l) of the FTC Act, 15 U.S.C. 45(l) - violation of a cease & desist order - has increased from \$42,530 to \$43,280; (2) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) - violation of a Trade Regulation Rule or any rule or law that can be enforced as one (such as Regulation B or the Fair Debt Collection Practices Act) - has increased from \$42,530 to \$43,280; (3) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) - violation of UDAP where the FTC had previously determined there to be an FTC Act violation during administrative litigation, if the FTC can show the defendant had actual notice of the violation - has increased from \$42,530 to \$43,280. The maximum civil penalty amount for violations of Section 621(a)(2) of the FCRA, 15 U.S.C. 1681s(a)(2) - knowing violation of the FCRA - has increased from \$3,993 to \$4,063.

CFPB Forms Taskforce. On January 9, the CFPB announced four members for its new Taskforce on Federal Consumer Financial Law. The taskforce will examine the current legal and regulatory environment facing consumers and financial services providers and report to Director Kraninger its recommendations for ways to improve and strengthen consumer financial laws and regulations.

The taskforce will “produce new research and legal analysis of consumer financial laws in the United States, focusing specifically on harmonizing, modernizing, and updating the federal consumer financial laws - and their implementing regulations - and identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.”

The taskforce members are: Dr. J. Howard Beales, III, former Professor of Strategic Management and Public Policy at the George Washington University and former Director of the Bureau of Consumer Protection at the Federal Trade Commission; Dr. Thomas Durkin, Senior Economist (Retired) at the Federal Reserve Board; L. Jean Noonan, Partner at Hudson Cook, LLP, former General Counsel at the Farm Credit Administration, and former Associate Director of the Bureau of Consumer Protection's Credit Practice at the Federal Trade Commission; and Todd J. Zywicki, Professor of Law at George Mason University Antonin Scalia Law School, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center.

Taking Action Against Pesky Consumers Who Post Unfavorable Online Reviews? Read This. On January 7, the FTC announced a \$120,000 settlement with Mortgage Solutions FCS, Inc., a mortgage broker, and its owner to resolve allegations that the company publicly disclosed its customers' personal information in response to the customers' critical online Yelp reviews of the company's services. The company allegedly responded to customers who posted negative reviews by disclosing their credit histories, debt-to-income ratios, taxes, health, sources of incomes, family relationships, and other personal information, as well as first and last names.

The FTC alleged that the company used consumer reports for an impermissible purpose in violation of the Fair Credit Reporting Act, failed to develop and implement an information security program and failed to test such a program in violation of the Safeguards Rule, provided customers with inaccurate privacy notices and engaged in impermissible disclosure of nonpublic personal information in violation of Regulation P, and committed unfair and deceptive acts or practices in violation of the FTC Act.

Case of the Month

Dealer Whose Lease Agreement Included Lease Acquisition Fee Along with Vehicle's Agreed Upon Value Did Not Raise Lease Price of Vehicle or Fail to Include Lease Acquisition Fee in

CarLawyer Cont.

Advertised Price, in Violation of Ohio Law. A vehicle lessee sued his lessor, alleging various causes of action related to the \$595 lease acquisition fee he was charged in addition to the agreed upon value of \$29,300 in the lease agreement. The trial court dismissed the lessee's complaint, and the Court of Appeals of Ohio affirmed.

The Ohio Administrative Code provides that it is a deceptive or unfair practice for a dealer to raise or attempt to raise the actual purchase price of a vehicle to a specific consumer or to advertise any price for a vehicle unless the price includes all costs to the consumer except tax, title and registration fees, and a documentary service charge. The lessee claimed that the lessor raised the vehicle's lease price by inserting the lease acquisition fee in its preprinted form lease agreement and/or failed to include the lease acquisition fee in the advertised price included in the lease agreement.

The appellate court found that the lease agreement included the advertised price, which consisted of the agreed upon value of \$29,300 and the lease acquisition fee of \$595. The appellate court noted that this case is not one in which "suspect fees were surreptitiously added to the payment that [the lessee] agreed to pay" or in which "[the lessee] claims ... that he was orally advised of a price other than that set forth in the Lease Agreement that did not include the lease-acquisition fee or that he saw a television commercial that advertised the lease price for an amount that did not include this fee."

See *Hatfield v. Preston Chevrolet-Cadillac, Inc.*, 2019 Ohio App. LEXIS 4796 (Ohio App. November 18, 2019).

This Month's CARLAWYER® Compliance Tip

The *Hatfield* case decision on acquisition fees came out in favor of the dealer. That's always good news, but the consumer's challenge of the fees should send up a warning flag. The question of whether a dealer may charge such a fee in a lease or retail installment sale transaction and, if so, how it must be disclosed, is one of the thorniest legal problems facing dealers. It's a question that involves both federal and state law, and one that involves several issues. What's more, the treatment of these fees may differ depending on whether the deal is a lease or a retail installment sale. If your dealership imposes such fees and has not had a recent thoroughgoing legal review of its practices, it's lawyer time again.

So, there's this month's article. See you next month!

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Sourcing - Used Inventory

As you all know we hear from a large number of dealers every day. As part of that we hear about some of the struggles that some dealers run into. One of those is sourcing a viable inventory. One dealer has talked about a struggle with going to auction, and finding the price range of vehicles that they want to put on their lot. They say that while they are at the auction, they are either mechanic specials, or they are quickly bid up.

Obviously, we cannot fix this problem. This is the nature of the beast when going to an auction, and it is built to be like that. What we can do however, is tell you about a better method. Trades, and consignments. A large number of our dealers are already successful, and have their own methodology in obtaining inventory. Getting it off of craigslist, auction or even being aggressive with trades.

However, recently it seems like it is becoming harder to obtain quality inventory without paying more than you want even when trying to take in trades. Just this week I have heard about Carvana taking someone's prime trade in before they had a chance to take it in, offering about 5-10% more than what they had been willing to spend. This is going to happen, these alternative channels, IE the internet based channels are becoming more and more common.

The key that has been repeatedly discussed as a counter is to take the hit on the trade in vehicle, and price more aggressively in an effort to reclaim a bit of the trade in inventory being redirected out of state most of the time. If you move towards a more volume intensive ideology versus attempting to hold a higher

gross you can level out the gross over time. This is an aggressive way to do business of course, and is not for all car dealers, since it requires a lot more turning and burning of inventory vs the more slow moving, but higher per vehicle gross methodology that has been used historically.

Franchise stores have an innate ability to maximize trade ins in ways that some used car dealers struggle with. They use their new inventory to create a churn of quality used inventory. Lease returns, people who trade in 3-5 years after they get their vehicles, and fleets. Their ability is built into the structure of their business. That said used car dealers have the ability to create the same kind of dynamic.

If you target slightly higher inventory to the inventory that in a perfect world you would be able to sell you can obtain the trade ins for those units, and create an inventory of lower tier inventory, while creating more foot traffic by having nicer inventory.

For example: If your target is to have a steady inventory of 5-15k priced inventory you need to target an inventory of \$20-25k. If your target is \$20-25K your buying needs to hit the \$28-35K price point.

Most dealers already have a fairly good grasp on this dynamic, but our industry keeps growing. We get folks daily getting their license for the first time and striking out on their own, and less and less of these dealers have spent even a day on a car lot, let alone enough time to gain a full picture of inventory management. So while we as an association know that this article is not particularly needed for all dealers it is needed for our new dealers

who are just starting off.

In closing, managing your inventory practices is becoming much more complex than it used to be. The internet, and internet departments at franchise dealers are quickly gaining the majority share of the prime inventory most used dealers want to sell. It is our job as managers, and owners to mitigate that draw through being competitive with our franchise competitors.

To that end we have the advantage. Franchise dealers have to adhere to the franchise policies, and standards. We do not. We can get creative with our advertising, and we can create a sale or event at any time. There is no policy to say that you cannot create a sale on higher end inventory to boost your lower end inventory during tax season.

The key tips that we will submit to you beyond what was already covered are the following:

- Pay attention to your nearest competitors.
- ◊ If they are a franchise buy to draw their customers to your inventory. Keep your eye on their pricing and stay competitive.
- Create your own Pricing Tiers to create your optimal inventory, and use marketing and sales events to drive in new trades.
- Be aggressive, but respectful. You want competition, not enemies. Other dealers can buy cars you don't want and that can be the key to a deal that you need to happen.

Turn & Burn

As you might have noticed from the previous article one of the topics this month is dealing with inventory. Targeting your inventory, and now we are going to move into some ideas to help you burn through your prime inventory to move into the next cycle of building inventory.

For many dealers it is crucial to move inventory quickly. You have a timeline with your flooring company, and you want to not only hit that timeline, but to get it dealt with early to move into either new inventory, or simply to expand your inventory.

We will examine some things to consider that should accelerate your inventories velocity.

Know what it's worth

Knowing what each unit is worth is critical. Seems pretty obvious, right? However, one of the biggest struggles is buying units from auction, off the street, or even trade ins and hitting a speed bump that costs money. Replacement parts, and the time to get those replacements into your vehicle while also trying to recon the vehicle can certainly be a challenge.

So our first tip is to address this while you are purchasing your vehicle. If you are buying from auction whenever possible purchase only greenlight vehicles. Off of the street bring a high end scanner, and/or a skilled mechanic. Trade ins should be the easiest for you. Have a mechanic scan and assess the vehicle prior to offering a number to close the deal.

Get Ready!

Every vehicle dealers purchase with ultra rare exceptions will need to be reconditioned. Know what repairs, and recon

each unit needs prior to purchasing it. Then put your turnaround to around 3-4 days. The faster you get vehicles online, and out to customers waiting eyes, the faster you can sell the vehicle. Some dealers are getting even more aggressive, and are putting up the inventory prior to even starting the recon process. The reason that I have heard people stating when they do this is to ensure that they have the largest variety of inventory in front of customers as quickly as possible.

Sometimes you are even to sell it prior to putting any time into a vehicle this way as well. Not for everyone, but certainly something to consider.

Price to sell

From day one insure that your inventory is priced competitively. If you are selling a vehicle over retail give your reasoning. Take a huge amount of pictures when you post your inventory to show each option that adds value to your vehicles.

After 30-45 days follow up. This is just as critical as showing value. If your next door neighbor is selling the same vehicle for 10 dollars less that 10 dollars could be the difference in selling that vehicle.

Additionally, setting one to two loss leaders per month can stimulate your customers interest in your inventory. You take a loss on one vehicle but on a case by case basis you could stimulate substantial velocity by just losing as little as \$100 on a couple of vehicles. Simply do the math and ensure that this technique is right for your dealership.

Time is money

When it comes to your inventory the longer it sits the more likely that unit will end up costing you money in one way or another. Be it lot rot or your own desperation to sell a vehicle.

One of the techniques I have seen used for is to set a calendar alert for each unit you put on your lot. 30-45 days is optimum. 45-60 is certainly viable for smaller dealerships. But turning your inventory is your key ingredient to maximizing your profitability.

There are a number of online options that are built directly into your website, and inventory system that allow for you to track how long you have had a vehicle, but knowing your inventories age is certainly important. If you can't sell it for the price you want, get out of it at cost, or use it to be a loss leader.

Keep in mind however that there is always a reason that a vehicle is not selling. Is it 2wd? Did your recon not fix and clean everything? Is it a bad color? Is it too plain? These are all questions to ask yourself when you near your 45 day mark.

Sometimes spending a few hundred dollars is the difference between hitting your sales timeline per vehicle. This circles back to getting the vehicle getting ready. Keep an eye out for small upgrades, or fixes that you can make to your inventory to make it sell more rapidly. Stereos, window tint, wheels, tires, tow packages, paint touch ups. These are just a few quick examples of things that we have seen send a vehicle from sitting on a lot to finding a new home.

CRM: What's That?

By: Kyle Willard, OVDA, Office Manager

I come from predominantly a sales background. This surprises some, and doesn't others. Because of that I have an obsession of finding ways to make my job easier and less time consuming. Sometimes this works, and sometimes it does not.

I am going to share with you one of the long proven ways to make a sales persons job easier, which will come as news to some, and to others it will be brand new, and could revolutionize the way you do business for the better.

To start lets talk about what a CRM is. It is a Customer Relations Manager. A piece of software that allows you to enter your customers information, and empowers you to follow up as is needed. It allows you to add notes, notate how hot a lead is, or how cold, and other important information.

This is used by almost every large corporation, and large sales organizations. Its used because of time management. The old school way was a little black book of customers that quickly got jumbled and had so many eraser marks that it was almost incoherent.

Now you can add, and delete notes, change addresses and phone numbers as your relationships with customers progress.

The evolution from the book of customers has been an interesting one. It moved from a book, to word and excel files, to finally someone coding a piece of software that helps you manage all of your customers. Schedule follow ups, add

notes & pictures, get phone notifications, and more all from one piece of software.

Now note, a lot of people do this with their web based mail clients, and that certainly works too, but having something dedicated allows you to quickly go through your active leads, and have an idea of what your customers are looking for when you go to sales.

It is to your advantage to know as much about your customers as possible, but far to often we fall into the trap of using paper, and other means that get messy, and disorganized. By using newer digital means you can keep your leads organized, and available wherever your cell phone or computer has access to the internet.

There are a large number of different companies that offer CRM services, ranging from some that are geared towards auto dealers, others are more general

sales based.

The association does not currently have a partnership with any of these companies, but they are very common, and can be found on google, and other search engines.

If you still have trouble finding the right option for you please feel to reach out.

