

FACT: In 2003, 5.4 million motorcycles were registered for use on public roads (some titles for off-highway motorcycles and ATVs are included).

This is an increase of 1.1% since 2000. Motorcycle registrations accounted for 2.3% of all motor vehicles registered for use on public roads in the U.S. in 2003.

Source: Motorcycle Industry Council, 2005 Statistical Annual



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published by the texas motorcycle dealers association

motorcycle DEALER news

1ST QUARTER 2007

register today for the 2007 tmda annual conference



february 10-11,
driskill hotel, austin

Mark your calendars and make plans to attend the 2007 TMDA Annual Conference, February 10-11 in Austin, Texas.

Education & Networking

Kickoff the meeting by networking with peers at a welcome reception on Saturday,

February 10. After breakfast on Sunday morning, attorney Bruce Bennett will present "Franchise Law Preparedness". Your dealership has a level of statutory protection from the whims of motorcycle manufacturers. This program will focus on providing you with the essential elements you need to be prepared for, and to weather the winds of change. A major portion of Mr. Bennett's practice focuses on automobile franchise law, and he represents dealers in disputes with manufacturers before the Texas Motor Vehicle Board. Mr. Bennett is board certified in Civil Appellate Law and also represents dealers in the Texas appellate courts.

Then, Jennifer K. Patterson, with McGinnis, Lochridge & Kilgore, L.L.P. will present "2006 Tax Reform De-Mystified: Property Tax Cuts and the New Margin Tax". Ms. Patterson concentrates her practice in state and local taxation matters and government relations. She will explain the new margin tax, including who is subject to it, how to calculate it, when it takes effect, and how it compares to the current franchise tax. The presentation also will include the property tax reductions enacted by the Texas Legislature in 2006, and how those reductions are intended to offset the new margin tax. The presentation will explain both the why and the how behind the 2006 tax reforms, and will help you determine the impact on your bottom line. The conference will conclude with lunch and a General Business Meeting.

TMDA members will not want to miss this year's conference! If you have questions please contact the association at 512/479-0425. Please see the enclosed flyer for conference registration. See page 6 for hotel reservation information.

sales tax on street-legal and off-road vehicles

TMDA has been in negotiation with the Texas State Comptroller of Public Accounts (Comptroller) on the issue of sales tax on motorcycles for street-legal and off-road vehicles. The following is an update from the Comptroller's office on this subject.

Handling Texas sales tax on sales of motorcycles requires a dealer to be aware of the distinction between street-legal vehicles and off-road vehicles. The dealer calculates the tax base for street-legal vehicles differently from the tax base for off-road vehicles. This is because the motor vehicle tax law applies to street-legal vehicles, while the sale of off-road vehicles is governed by the sales and use tax law.

This Comptroller notice is to instruct dealers on the proper tax collection, to provide guidance to those dealers who may not have collected correctly, and to address issues about the agriculture exemption for street and off-road motorcycles.

Street-legal vehicles

Street-legal motorcycles are taxed under Tax Code Chapter 152, motor vehicle sales
continued on page 5

'07 tmda annual conference

Schedule of Events

Saturday, February 10

5:00 - 6:00 p.m.
Registration

5:30 - 7:00 p.m.
Welcome Reception at Hotel

7:00 p.m.
Dinner on Your Own

Sunday, February 11

8:30 - 9:00 a.m.
Continental Breakfast

9:00 - 10:00 a.m.
Franchise Law Preparedness
Bruce Bennett, Attorney,
Cardwell, Hart and Bennett, LLP

10:15 a.m. - Noon
**2006 Tax Reform De-Mystified:
Property Tax Cuts & the New Margin Tax**
Jennifer Patterson, Attorney,
McGinnis, Lochridge & Kilgore, LLP

Noon - 1:30 p.m.
Lunch

1:30 - 2:30 p.m.
TMDA General Business Meeting

2:30 - 4:30 p.m.
TMDA Board of Directors Meeting

tmda files complaint on behalf of suzuki dealers

On July 27, 2006 TMDA filed a complaint with the Texas Motor Vehicle Division (MVD) on behalf of Suzuki dealers as a result of dealers voicing their concerns about the legality of a practice that Suzuki has been engaging in periodically since the spring of 2005.

According to the dealers, Suzuki has been requiring them to accept deliver of and pay for unordered new ATV units. These unordered ATV units generally consist of Suzuki's less popular Eiger 400, LT-Z250, and LT-Z400 models. Typically, the unordered ATVs are included in the shipments of other models that the dealers have ordered from Suzuki. Suzuki, however, will not permit the dealers to return the unordered ATVs or credit them with the purchase price of these unwanted units. Suzuki coerces dealers into retaining the unordered ATVs by telling them that all shipped units, including the units that

the dealers want and actually ordered, must be returned.

The dealers have also informed TMDA that, for warranty purposes, Suzuki is sometimes registering the unordered ATVs in the dealers' names when the units are shipped to the dealers. However, for the ordered ATV units, warranty registration does not occur until the units are actually sold to retail customers.

TMDA believes that Suzuki's actions violate §2301.451 of Chapter 2301 of the Texas Occupations Code. The Association also believes that Suzuki's actions violate the antitrust laws, which would constitute a violation of §2301.651(a)(4) of the Code.

TMDA has requested that the MVD conduct an investigation into this matter and take appropriate action to protect the dealers from Suzuki's violations of the Code. TMDA will keep members apprised of the MVD's response.

tmda leader gene brady passes away

The motorcycle industry was changed this past summer, as the result of the loss of one of Pasadena's best, Gene Brady. Gene, one of the most knowledgeable and influential dealers in the state of Texas, passed away from natural causes on the morning of August 23, 2006.

Mr. Brady served on the Texas Motorcycle Dealer's Association's Board of Directors for over 30 years, and was a great friend and significant contribution to our industry.

Donations may be provided on behalf of

Gene to the Pediatric Brain Tumor Foundation. If you wish to make a donation, please forward to:

Pediatric Brain Tumor Foundation
302 Ridgefield Court
Asheville, NC 28806

You can also make donations on the phone at 800.253.6530, or go online to <http://www.pbtfus.org/donate.htm>.

TMDA expresses its deepest condolences to the family and friends of Gene.

Universal Underwriters Group

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four focus is your success

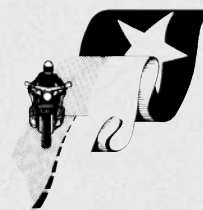
Since 1922, Universal Underwriters Insurance Company has demonstrated strength and stability as the leader in dealership insurance. We view your dealership through the lens of experience, focusing on your business. Our mission is clear -- know dealers' needs and become a partner in your success.

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Winn Tripp in Dallas at 800-622-6262

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Texas Motorcycle
Dealers Association



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Dealer Dealer Dealer Dealer TIPS

Developing and Retaining Loyal Customers



A satisfied customer will shop at any dealership that sells the new- or used-vehicle he or she wants, assuming approximate price parity and reasonably pleasant service. A loyal customer will buy only from you.

Customer retention is arguably the single most important driver of your dealership's value, and the key to growing your business. Retained customers return to your dealership each time they buy or lease vehicles; they won't deal with anyone else. Retained customers talk to their families, their friends, and their colleagues about how well you treat them, and these people become your customers, too. All those customers together constitute a strong base of customers whose loyalty is worth millions—literally.

Dealers have long been aware of the importance of customer retention. They measured customer satisfaction by the number of times their customers returned to buy vehicles, and/or brought their vehicles in for service, and/or referred prospects. Dealers knew their customers and stayed in touch with them because dealers understood the benefits of retaining their customer base.

Today, dealerships keep in touch with their customers using a sophisticated business model supported by equally sophisticated technology. Customer Relationship Management (CRM) is a way of documenting, tracking, analyzing, and building

upon each customer's every contact with the dealership, regardless of the point or method of contact. A contact may happen in the form of a showroom visit, an incoming or outgoing telephone call, or any means of written communication (mail, fax, or the Internet, including e-mail). Over time, and with the input of each dealership employee who interacts with each customer, the dealership builds detailed, individualized customer portraits, which then provide the information needed to maximize sales opportunities and strengthen the ties between customers and dealership.

Your dealership's relationship with customers is what differentiates your store from all the other stores in your marketplace. You need to be extremely sophisticated about customers because you need them more than they need you. You need to earn their business. They need reasons more compelling than price, convenience, or product to give you their business. They'll choose you if you provide the individualized customer service that the other stores don't. They'll be loyal to you if you take the steps to earn their loyalty. For customers, good service for loyalty is quid pro quo. For you, what you give comes back to you times ten:

It costs ten times more to bring in a new customer than it does to retain an old one.

texas taxes: standard presumptive value

In the 3rd Called Session, 2006, the 79th Legislature adopted H.B. 4, which adds Tax Code §152.0412 and changes the tax base for calculated sales and use tax due on the sale of a used motor vehicle in a private-party transaction¹.

As of October 1, 2006, the sales price of a used motor vehicle, for purposes of determining the motor vehicle sales tax due, is no less than 80% of the used motor vehicle's standard presumptive value,² or an appraised value established by a certified appraisal.

If a used motor vehicle is purchased from a dealer, the sales price on the title application, Form 130-U, continues to be used for motor vehicle sales tax calculation.

If a consumer does not agree with the 80% of the motor vehicle's standard presumptive value for the purposes of calculating the motor vehicle sales due, the consumer may establish the tax due by obtaining a certified appraisal. Upon request by a purchaser of a used motor vehicle, a dealer must provide a certified appraisal.

A dealer may only provide an appraisal for the category of motor vehicle which the dealer is licensed to sell, such as motor vehicle dealer, motorcycle dealer, house trailer dealer, trailer or semitrailer dealer. An insurance adjuster may also appraise any type of used motor vehicle.

In order to provide an appraisal, the dealer must:

1. View the motor vehicle in person;
2. Complete the information requested on the Comptroller's appraisal form (see enclosed "Used Motor Vehicle Certified Appraisal Form"); and,
3. Charge no less than \$100 and no more than \$300 for a certified appraisal.³

The certified appraisal fee is not subject to limited sales and use tax under Tax Code, Chapter 151, and is not subject to motor vehicle sales and use tax under Tax Code, Chapter 152.

A county tax assessor-collector may question a certified appraisal for the purpose of determining the truth and accuracy of the information it contains. If the tax assessor-collector has reasons to question the truth of the information in a statement, or if any material fact fails to meet the comptroller's guidelines, the tax assessor-collector or the comptroller shall require any party to the statement to furnish substantiation of the information contained in the statement.⁴

Excluded vehicles from this rule are:

1. A vehicle involved in an even exchange or trade, Tax Code §152.024;
2. A vehicle received as a gift, Tax Code §152.025;
3. A vehicle acquired through a mechanic's lien, Property Code, Chapter 70;
4. A vehicle acquired through a storage lien, Occupations Code, Chapter 2303;
5. An abandoned or abandoned nuisance vehicle acquired under Transportation Code, Chapter 683; and,
6. A vehicle eligible for a specialty license plate as a classic motor vehicle, Transportation Code, §504.501.

If you have any questions, please call 1-800-749-8232.

¹ "Private-Party Transaction" means a retail sale of a motor vehicle in which no party is a dealer (34 TAC §3.79(a)(7)).

² "Standard Presumptive Value" means the private-party transaction value of a motor vehicle, as determined by the Texas Department of Transportation based on an

appropriate regional guidebook of a nationally recognized motor vehicle value guide service, or based on another motor vehicle guide publication that the department determines is appropriate if a private-party transaction value for the motor vehicle is not available from a regional guidebook.

³ A licensed motorcycle dealer may charge no less than \$40 and no more than \$300 for a certified appraisal of a motorcycle; and, a dealer may charge no less than \$100 and no more than \$500 for a certified appraisal of a house trailer, travel trailer, or a motor home. An insurance adjuster is not limited to the amount charged for a certified appraisal under the Comptroller's rule. (34 TAC §3.79(d)(4)).

⁴ 34 TAC §3.79(d)(6); Tax Code §152.062(e).

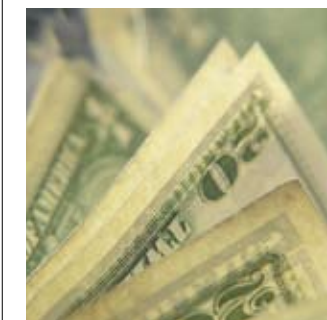
Questions and Answers about Standard Presumptive Value

by Former Texas Comptroller Carole Keeton Strayhorn

October 1, 2006 brought changes on how motor vehicle tax is calculated on private-party sales of used vehicles. The new law requires that a "standard presumptive value" (SPV) be used to calculate the tax due on private-party sales.

Although sales by a licensed motor vehicle dealer are excluded from the SPV calculation and rules, private party purchasers can ask you for an appraisal to establish the value of a vehicle for tax purposes under the new law. Here are some common questions and answers to help explain the new law and its effect on licensed dealers.

Question: Does the law affect me, a licensed motor vehicle dealer, when



for more information

If you have questions or need more information about these or other state taxes, call the Comptroller's office toll-free at 1-800-252-1382 (in Austin, 512/463-4600), or email us at tax_help@cpa.state.tx.us.

register today!
tmda annual conference
February 10-11, 2007 The Driskill Hotel, Austin, Texas

The TMDA Conference will be held at the Driskill Hotel in Austin, Texas. TMDA has reserved a block of rooms for conference attendees at a special rate of \$185.00 if reservations are made prior to January 17, 2007.

To make reservations, please call the hotel at 512/474-5911 or 800/252-9367 and mention "TMDA."

The Driskill is a world unto itself, a world which transcends time and place. Located in the heart of Texas, this was once the proud show place of a cattle baron. It now stands apart as a landmark of refined hospitality with a rich appreciation of the past and a new vision for the future.



2005 lemon law update

The 2005 Annual Lemon Law Report includes text and charts to illustrate the resolution of 744 complaints during 2005. Most complaints involved passenger cars and light trucks; however 13 complaints were received on all terrain vehicles, and motorcycles.

One complaint was filed on each of the following make/models of motorcycles:

American Ironhorse, Legend American Ironhorse, Tejas Aprilia, Scarabeo Bourget, Fat Daddy Kawasaki, VN 1600 Kawasaki, ZX 1000 Kubota, RTV900R (ATV) Polaris, Ranger (ATV) Superbike, 749S Yamaha, FJR1300 Yamaha, Royal Star Ventur

Two complaints were filed against the Big Dog, Chopper model.

standard presumptive value, continued from page 3

I sell a used vehicle? Can you give me details about the change in the law? Is the motor vehicle sales tax rate the same?

Answer: The new law does not affect sales by a licensed dealer. Only private-party sales – such as a sale by a neighbor, a relative, or any other individual – trigger the SPV rules. The SPV will be based on information determined and provided by the Texas Department of Transportation (TxDOT).

When the buyer in a private-party transaction titles and registers the vehicle, the county tax assessor-collector (TAC) will determine the motor vehicle tax due from one of the following:

1. the vehicle's sales price, if the purchaser paid 80 percent or more of the vehicle's SPV; or
2. 80 percent of the vehicle's SPV, if the purchaser paid less than 80 percent of the vehicle's SPV; or
3. the vehicle's certified appraised value, if the purchaser paid less than 80 percent of the vehicle's SPV and provides a certified appraisal to the TAC.

There is no change to the 6.25 percent motor vehicle tax rate.

Question: If the purchaser paid less than 80 percent of the vehicle's SPV and wants a certified appraisal, who does the appraisal? Is that how the licensed dealers are affected?

Answer: The purchaser has two options, and this is where a dealer may come into play.

Option one is for the purchaser to obtain a certified appraisal from a licensed dealer. Licensed Texas motor vehicle dealers can appraise the categories of motor vehicles that they are licensed to sell. That is, automobile dealers can appraise automobiles and motorcycle dealers can appraise motorcycles. Licensed dealers include new and used vehicle dealers, wholesale dealers, wholesale auction dealers, motorcycle dealers, trailer dealers, and any other dealers licensed by the Transportation Code, Chapter 503, Subchapter B, but not a drive-a-way operator.

Option two is for the purchaser to get an appraisal from a licensed insurance adjuster.

Question: If I, a licensed dealer, am asked to appraise a vehicle, am I required to provide the appraisal for the motor vehicle I did not sell? Am I required to have an appraiser's license? Are there guidelines for how much I can charge for the appraisal?

Answer: Under the new law, a licensed dealer must perform the appraisal if asked. You do not need an appraiser's license, but you must hold a license with the Texas Department of Transportation.

The Comptroller sets the fee for a certified appraisal by a licensed Texas motor vehicle dealer. Dealers can charge between \$100 to \$300, except for appraisals of motorcycles, travel trailers, and motor homes. *A licensed motorcycle dealer can charge no less than \$40 and no*

more than \$300 for a certified appraisal of a motorcycle. For a certified appraisal of a travel trailer or motor home, the fee can be no less than \$100 and no more than \$500.

Question: Since the Comptroller is required to set the appraisal fee a dealer may charge, is there also a required form?

Answer: Yes. Both motor vehicle dealers and licensed insurance adjusters performing these appraisals must use the prescribed Comptroller Form 14-128, Used Motor Vehicle Certified Appraisal Form. This form is available on the Comptroller's Web site at www.window.state.tx.us under "Texas Taxes."

Question: Is there anything else a dealer should know about performing the appraisal or completing the appraisal form?

Answer: The appraiser must view the motor vehicle in person and provide all the information requested on the appraisal form. The appraiser should identify mechanical, appearance, or other factors that affect the retail value.

The form must be filled out in full. If an item does not apply, note "not applicable." Any change to the appraisal form after completion voids the form in its entirety. Also, the appraiser should keep a copy of the appraisal and give the original to the purchaser.

To find out more ways you can improve your business, call TMDA at 512.479.0425.

sales tax, continued from page 1

tax, at 6.25 percent state tax only. There is no local tax on motor vehicle sales. County tax assessor-collectors collect the motor vehicle sales tax at the time of vehicle titling and registration.

The tax base is the sales price of the vehicle, excluding the local vehicle inventory tax (VIT) on the vehicle and documentary fees. The VIT is a local property tax on the motor vehicle dealer's inventory. Texas Tax Code §152.002 specifically excludes the VIT from the sales price.

Since 1971, the agency has instructed dealers that documentary fees paid for preparing and processing documents to title and/or register a motor vehicle at the county tax office are not part of "total consideration" paid for the vehicle and not subject to motor vehicle sales tax.

Off-road vehicles

Off-road vehicles are self-propelled vehicles designed for use off public streets and highways. Examples include dirt bikes, golf carts, foreign-made miniature motorcycles, all-terrain vehicles (ATVs), and other vehicles not designed or intended by the manufacturer to meet motor vehicle registration and safety inspections.

Sales of off-road vehicles are taxed under Tax Code Chapter 151, limited sales and use tax, at 6.25 percent state tax, plus local sales taxes up to 2 percent. Dealers remit this sales tax directly to the Texas Comptroller.

The tax base is the total sales price of the off-road vehicle, including the local VIT and documentary fee. Tax Code §151.007's definition of "sales price" does not list the VIT or the documentary fee as exclusions from tax. Dealers are responsible for collecting sales tax on the VIT and documentary fee charged in connection with the sale of an off-road vehicle.

Due to misunderstandings regarding the taxability of documentary fees, the Comptroller is instructing dealers to collect sales tax on documentary fees paid for off-road vehicles on a prospective basis, effective November 1, 2006. Any tax correctly collected cannot be refunded. However, if a dealer did not collect tax on documentary fees paid for off-road vehicles prior to November 1, the Comptroller will not hold the dealer liable for this error.

Agriculture exemption

Chapter 151 provides a limited sales tax exemption for equipment used in the pro-

duction of farm and ranch products. The question arises whether off-road motorcycles and ATVs purchased by farmers and ranchers could qualify for the agriculture exemption.

The farm and ranch exemption is limited to equipment exclusively used in the production of agricultural products for sale. Off-road motorcycles and dirt bikes are presumed not to qualify for the exemption. Conversely, ATVs used exclusively to spray crops or to feed cattle will qualify for the exemption.

A customer claiming an exemption on an ATV purchase must complete an exemption certificate in full, including the reason for the exemption. A dealer can request either of the following two items from the customer to confirm the exemption claim for agriculture production in addition to, or as part of the information provided on, the exemption certificate: (1) the customer's Schedule F of the federal tax return or (2) the customer's permit number as shown on Comptroller Form 06-710, Texas Agricultural Signed State-

ment for Purchasing Tax Free Dyed Diesel Fuel (this permit number begins with AG followed by 8 numbers). With such documentation, the dealer will be relieved from the responsibility of collecting tax on that sale. If it is later found that the customer did not use the ATV in an exempt manner, the customer will be held liable for the tax, penalty, and interest on that purchase.

A dealer can check for a customer's fuels permit number by using the "Fuels License Search" or the alphabetical listing of the "Signed Statement Registration Numbers" located on the Comptroller's Web site at www.window.state.tx.us/tax-info/fuels/diesel.html.

A dealer can elect to deny the exemption claim on a purchase but assign the right to a refund to the customer, so that the customer can pursue a tax refund from the Comptroller's office. The dealer can use Form 00-985, Assignment of Right to Refund, available on the Comptroller's Web site at www.window.state.tx.us.

Questions

If you have any questions about collecting motor vehicle or limited sales tax, you can contact the Comptroller's office by e-mail at tax.help@cpa.state.tx.us or call toll free at 1-800-252-1382.



4 tools for your business

TMDA Endorsed Service Providers

Contact the following TMDA endorsed companies for special member rates on services. Your participation in these programs also benefits TMDA by providing quarterly promotional allowances from the companies.

Discount Credit Card Processing First National Merchant Solutions

Contact: Chris Lynn
Phone: 866/778-4986

Property & Casualty Insurance Universal Underwriters

Contact: Wayne Knippers
Phone: 281-405-5226
E-mail: wayne.knippers@zurichna.com

Energy Buyers Program Affiliated Power Purchasers Int'l

Contact: Bill Kuzmich
Phone: 832/225-1275
E-mail: wkuzmich@appienergy.com
Contact: Mandi Krack
Phone: 800/520-6685
E-mail: mkrack@appienergy.com

Motorcycle and Personal Watercraft Insurance, Motorcycle and Personal Watercraft Service Contracts

The McGraw Group
Contact: Jack Ward
Phone: 512/762-3570
E-mail: csward@msn.com