



MOTORCYCLE

DealerNews

Published by the Texas Motorcycle Dealers Association

May 2004 Declared as Motorcycle Safety and Awareness Month in Texas

Governor Perry Signs Proclamation

Governor Rick Perry has declared May as Motorcycle Safety and Awareness Month in Texas. DPS urges all motorcyclists, both experienced and inexperienced, to attend a professionally taught motorcycle course to improve their skills and increase safety.

More than 700,000 people in Texas are licensed to operate a motorcycle – and as the weather improves during the

month of May, many of these drivers take to the roadways to enjoy the season. For both new and experienced riders, May is the perfect time to renew motorcycle operation skills and knowledge.

“The DPS Motorcycle Safety Unit offers basic and advanced motorcycle operator training in 45 permanent locations and 11 other sites that use two mobile training units,” said Clifton

Burdette, coordinator of the DPS Motorcycle Safety Unit. “In 2002, 20,636 Texans took either the basic or advanced course – a 29 percent increase over 2001.”

The basic motorcycle operator training course is for unlicensed or inexperienced riders, and the advanced course is for more experienced riders. In addition, both

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TxDOT Continues to Enforce “Blue Law”

El Paso Dealers Court Case Remains Pending Final Decision

As many dealers are aware, the case challenging the constitutionality of the Blue Law is, and has been in the courts for approximately four years now. According to a letter recently sent to TMDA, TADA, TIADA and the RV Dealers of Texas by Carol Kent, Assistant Director for Enforcement with the Motor Vehicle Division, TxDOT: “Regardless, until such time as the courts should declare the law unconstitutional, the law should still be considered to be a valid law and all licensees should be abiding by the law.”

Because many dealers are questioning as to whether or

not the injunction prohibiting TxDOT from enforcing the Blue Law is still in effect, Ms. Kent continues the Division’s position:

“We intend to vigorously pursue such licensees [who violate the law] once the injunction has been lifted, to the point of requesting that the penalty for such violation should be a weekend closure for every weekend open in violation... Therefore, we are still accepting complaints of Blue Law violations and will be holding these for prosecution pending the reaffirmation of the constitutionality of the law.”

The Honorable Ward Koehler, Senior Judge of the 8th Court of Appeals to the 383rd Judicial District Court, El Paso County, Texas, has been assigned, as of October 14, 2003 to *Carmax Auto Superstores, Inc. and El Paso Independent Automobile Dealers Association, et. al. v. State of Texas, et. al.*

TMDA, TADA, TIADA and the RV Dealers Association of Texas have intervened in the above-styled cause of action. Please contact TMDA at 512/479-0425 for questions about the case.

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From TMDA



TMDA Offers Code Booklet to Members

Booklet Reflects Legislative Amendments Made by 78th Session

TMDA recently mailed copies of the most recent code booklet that reflects the legislative amendments made by the 78th Legislature, Regular Session. The booklets are made available to TMDA members through a special agreement with the Texas Automobile Dealers Association.

The code booklet has been retitled to the Occupations Code because in 2003 the Texas Motor Vehicle Commission Code was repealed and is now the Occupations Code.

Incorporated in the booklet

are the following statutes:

- **Occupations Code**
 - Occupations Code (formerly TMVC Code)
 - Charitable Raffle Enabling Act
- **Transportation Code**
 - Certificate of Title Act
 - Registration of Motor Vehicles
 - Dealer's and Manufacturer's Vehicle License Plates
 - "Blue Law"
- **Tax Code**
 - Taxes on Sale, Rental, and Use of Motor Vehicles
 - Appraisal of Inventory
- **Business & Commerce Code**
 - Deceptive Trade Practices-Consumer Protection Act
 - Center High-Mounted Stop Lamp
- **Finance Code**
 - Motor Vehicle Installment Sales
- **Insurance Code**
 - Uninsured and Underinsured Motorist Coverage
 - Repair of Motor Vehicles; Disclosure of Consumer Information
- **Labor Code**
 - Payment of Wages
- **Property Code**
 - Mechanic's Liens

Please contact TMDA at 512/479-0425 if you did not receive a copy of the booklet.

Motorcycle Safety and Awareness Month, continued from page 1

of the courses may qualify for ticket dismissal and insurance discounts.

While Texas does not require all motorcycle riders to wear helmets, the DPS strongly encourages riders to wear helmets to increase safety and save lives. Fatalities of motorcyclists not wearing helmets drastically increased during the last decade. In 1990, 21

percent of motorcycle-related fatalities involved people not wearing helmets. By 2000, that number had increased to 63 percent.

Texas law states that in order to be exempt from wearing a helmet, a person must be at least 21 years of age. In addition, they must successfully complete a motorcycle safety course or be covered by a

health insurance plan providing at least \$10,000 in medical benefits for motorcycle-related injuries.

Information about the Motorcycle Safety Unit classes can be found on the DPS Web site at www.txdps.state.tx.us/msb. For additional information on motorcycle training, call 512-424-2021 or toll-free at 1-800-292-5787.

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Affiliated Power Purchasers Int'l

Energy Buyers Program
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Phone: 800/520-6685
E-mail: sdhunt@appienergy.com

The McGraw Group

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

What is Your Dealership Worth?

by James L. (Butch) Williams, CPA/ABV, CBA

Consolidators are buying again, and sales of dealerships are on the rise. In this article, we address the various reasons for valuing a dealership and how that might apply to you.

I have been working with dealers for over twenty-five years, and we have performed valuations for a wide variety of reasons. However, when all is said and done, there are generally four or five major reasons for having your dealership(s) valued. Does the reason for obtaining a valuation influence the value? Absolutely! For now, we'll focus on the major reasons dealerships are valued.

Estate and Gift Planning

The largest number of valuations we perform each year still have to do with dealers' estate and gift planning. With the annual exclusion and the estate tax exemption levels increasing rapidly over the next few years, many dealers are taking advantage of these increases to accomplish meaningful estate planning advantages. When the IRS made the "check the box" requirements on gift tax returns (meaning you had to reveal to the IRS if you were taking discounts in your valuations), the need for solid valuations that could withstand IRS scrutiny increased considerably. Values attached to your dealership are usually significant, and the tax ramifications in not obtaining a quality valuation can be staggering. It is essential that your valuation expert be familiar with the industry and can work effectively with your tax attorney and other estate planning professionals.

Purchases and Sales

We are often called upon by dealers to value dealerships that are either being sold by the client or purchased. As was mentioned above regarding estate planning, the values of dealerships are usually significant, and the dollars involved in these transactions are major. While most dealers are very familiar with the financial statements and operating performances of the target dealerships, a skilled valuation professional can provide valuable advice in arriving at the worth of the store. Having participated in numerous transactions over the years, I can assure you that the old adage, "No deal is better than a bad deal", is probably more true today than ever before. The advent of the consolidators into the market place over the past five years has escalated prices and expectations of sellers. However, for a deal to be a good one, it has to provide a fair rate of return for the investor. No matter how attractive a dealership is packaged, it still boils down to the numbers and the store's ability to generate a profit. From the seller's standpoint, a valuation serves as an excellent tool to place the selling dealer in "economic reality" to sell their store. Many a dealership has suffered by a dealer with greatly inflated expectations taking his store to the marketplace, only to be rejected by more knowledgeable buyers.

Divorce

Unfortunately, when a dealer goes through a divorce,

the value of the store becomes a major source of contention. Most often, the "out spouse" seeks the highest value possible, and the dealer seeks the lowest. Invariably, the parties will hire the appraisers that will provide them with the results closest to those that they desire, and we have found that those appraisers producing the extreme ranges of values tend to be those unfamiliar with the industry. A skilled valuation professional can effectively value the dealership and provide the attorney with the necessary ammunition to counter unreasonable attacks by less knowledgeable experts.

Shareholder Disputes

Another unfortunate occurrence is a dispute that arises between shareholders. Well-intentioned partnerships that started with just a handshake, as well as business relationships supported by poorly worded or vague buy-sell agreements commonly wind up in dispute. To reach resolution, a valuation is often required, and the parties usually align in fashions similar to those described above in divorce cases.

Other Reasons

Some of the more common additional reasons for performing valuations include income tax filings (ex. computing the built-in gains tax when converting from a C corporation to an S corporation), ESOPs (Employee Stock Option Plans), buy-sell agreements, factory disputes, ad valorem

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Taxes 101: Which Services Are Taxable?

by Carole Keeton Strayhorn, Texas
Comptroller of Public Accounts

We at the Comptroller's office are often asked about sales tax on the services that dealers buy, and below are some of the more frequently asked questions. Also, the 2003 Texas Legislature changed how local sales tax on services will be collected. The change, described below, takes effect July 1, 2004.

Question: We have a company that takes care of the grounds at the dealership and another company that cleans our building nightly. Both companies charge me sales tax. Is this correct?

Answer: Yes. Mowing and other landscaping services are subject to tax, as are cleaning and janitorial services.

Question: Should the company that monitors our dealership's security system charge sales tax on their services?

Answer: Yes, security services are taxable if the provider is required to be licensed by the

Texas Commission on Private Security. Taxable security services include installing and monitoring burglar alarm systems, and providing security guards.

Question: I use a service to verify information on trade-in vehicles. Is the charge taxable? Does it make a difference if the service provider is located in another state?

Answer: Providing information is a taxable service, and include access to title information, mailing lists, and vehicle location or parts databases. The service is taxable regardless of where the provider is located. If the service provider did not collect Texas sales tax, you are still liable for the tax and should include the charges on your return as a taxable purchase.

Question: I recently hired a contractor to remodel my customer waiting area, and he charged tax on the entire bill, not just on the materials. Is this correct?

Answer: Yes, the contractor was correct to charge sales tax on the entire bill. In remodeling nonresidential real prop-

erty, labor and materials are both taxable. For new construction, however, only charges for materials are taxable if separated from charges for labor.

Changes in Collection of Local Sales Tax

Presently, retailers who provide taxable services collect local tax based on their place of business. Beginning July 1, 2004, however, retailers who provide taxable services must collect local tax based on the location where the service is performed or otherwise delivered to the purchaser. (The change does not apply to telecommunications services.) Therefore, starting this summer, you may see changes in the amount of local tax assessed on the taxable services you purchase. But remember, local taxes cannot exceed a total of 2 percent.

Carole Keeton Strayhorn is the Texas Comptroller of Public Accounts. 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 e-mail us at tax.help@cpa.state.tx.us.



February 12-13, 2005
2005 TMDA Annual Conference

Austin, TEXAS

Watch here for more details.

Regulatory Update

Governor Perry Appoints Four to TxDOT Motor Vehicle Board

Governor Rick Perry recently announced the appointment of Roger Williams of Weatherford, Kevin Pagan of McAllen, Cynthia Tyson Jenkins of Irving, and Mike Arismendez, Jr. of Shallowater to the Texas Department of Transportation Motor Vehicle Board. The nine-member board regulates the new and used motor vehicle industry in Texas and enforces the Texas Motor Vehicle Commission Code and the Texas Lemon Law. Pagan has been named chair of the board.

Williams is owner and chairman of Roger Williams Chrysler Dodge Jeep and Roger Williams Ranches. He currently serves on the board of trustees for the Bush School of Government and Public Service at Texas A&M University at the request of former Pres.

George H. W. Bush. He is also a member of the Texas Christian University board of trustees. Williams is a former professional baseball player for the Atlanta Braves and is an inductee into the TCU Athletic Hall of Fame and the Automobile Hall of Fame. He received his bachelor's degree from Texas Christian University. His term will expire Jan. 31, 2009. This appointment is subject to Senate confirmation.

Pagan is the deputy city attorney for the City of McAllen. He is a major in the Civil Air Patrol (USFA-Aux) and a member of the State Bar of Texas and the Aircraft Owners and Pilots Association. Pagan serves on the Pastor's Counsel for Harvest Church. His term will expire Jan. 31, 2005 and he will serve as presiding officer at the pleasure of the governor.

Jenkins, whose term expires Jan. 31, 2005, is the director, vice president and programmer/analyst for CTJ Maintenance, Inc. She is a member of

the Dallas Chamber of Commerce and served as an election judge in 2000. Jenkins attended Ouachita Baptist University in Arkadelphia, Arkansas, and received her bachelor's degree from East Texas State University (now known as Texas A&M University – Commerce).

Arismendez, whose term expires Jan. 31, 2009, is the former Mayor for the City of Shallowater and owner of La Amistad Mexican Restaurant. He is a member of the South Plains Chapter of the Texas Association of Sports Officials and serves as chairman of the board of Lubbock County Child Protective Services. He has served as vice president for Raiders Rojos, which is a chapter of the Texas Tech Alumni Association. Arismendez earned his bachelor's degree from Texas Tech University and attended the master's program for St. Edward's University in Austin.



Mike Arismendez, Jr.



Cynthia Tyson Jenkins



Roger Williams

What is Your Dealership Worth?, continued from page 3

tax issues, IRS examinations, and shareholder redemptions.

Professionals skilled in both valuation science and knowledge of the industry are great

resources to help you better understand what your dealership is truly worth. To learn more about specific valuation issues within your dealership,

please call Butch Williams at (205) 212-5313.

Source: The Driving Force: Dixon Odom Dealer Services Group

Dealer Regulations

Changes to Equal Credit Opportunity Act Regulations

Changes to Regulation B, which implements the Equal Credit Opportunity Act (“ECOA”) became final on April 15, 2004. The changes, proposed last year by the Federal Reserve Board (“Board”), involve several areas affecting dealers.

One change gives a dealer/creditor the *option* of collecting certain personal applicant characteristics to use for self-testing for compliance with ECOA. Another change involves the rules for evaluating married and unmarried credit applicants and obtaining signatures of nonapplicants.

Less important changes require creditors to retain certain records related to prescreened solicitations for 25 months, and clarify the definition of adverse action.

Collecting Personal Applicant Information for Self-Testing

The revised regulation retains the general prohibition against creditors’ inquiring about, or noting, a credit applicant’s sex, race, color, religion, or national origin. The regulation contains this prohibition because ECOA makes it unlawful for creditors to consider any of these prohibited characteristics in a credit transaction.

The revised regulation creates an exception to the general prohibition. The exception allows the collection of these personal applicant characteristics solely for the purpose of conducting a self-test for compliance with ECOA. The Board noted that creditors desiring to monitor and assure compliance with ECOA by collecting information about applicants’

personal characteristics should not be prevented from doing so. The revised regulation also establishes a privilege of non-disclosure for self-test results. (As noted above, this would be an optional exercise by a dealer. It is not required.)

A creditor collecting this personal information must disclose orally or in writing at the time the information is requested that:

1. the applicant is not required to provide the information;
2. the creditor is requesting the information to monitor compliance with ECOA;
3. federal law prohibits the creditor from discriminating on the basis of the information or the applicant’s refusal to provide the information; and
4. certain information will be collected based on visual observation or surname is not provided by the applicant.

Any information about the applicant’s personal characteristics collected as part of a self-test must be kept separate from the loan or application files and from other business records related to credit transactions for the privilege to apply.

To collect this information, and qualify for the non-disclosure privilege for test results, a creditor must comply with the requirements of the self-test in the regulations. The self-test provision requires that creditors take appropriate and timely corrective action when the self-test shows that it is “more likely than not” that a violation of the ECOA or Regulation B has occurred.

A self-test must be designed to evaluate compliance with ECOA and Regulation B. A self-test used solely to determine compliance with other laws, or to evaluate employee efficiency or customer satisfaction, is not privileged. A variety of testing methods are permit-

ted. Using mystery shoppers or surveying actual applicants are two acceptable methods.

Corrective action may include addressing the policies or procedures that caused the violation, offering compensation to improperly treated applicants, and developing new employee training or outreach programs.

Creditors will need to be careful to avoid acts considered to be a voluntary disclosure of self-test results documenting non-compliance. A creditor’s corrective action is not considered voluntary disclosure of the self-test results. Voluntary disclosure, and waiver of any privilege of confidentiality for the results, could occur, however, if the test results are disclosed to a credit applicant in connection with a new offer of credit.

Evaluating Married/Unmarried Applicants and Obtaining Signatures of Nonapplicants

A creditor may consider the marital status of an applicant or joint applicant to ascertain the creditor’s rights and remedies applicable to an extension of credit, for example, involving a secured transaction of real property, where state law may give the applicant’s spouse an interest in the secured property. Otherwise, a new section requires creditors to evaluate married and unmarried applicants by the same standards. For example, joint applicants may not be evaluated differently based on the existence, absence, or likelihood of a marriage between the parties.

A creditor may not require an applicant who is individually creditworthy to provide a cosigner. In addition, signatures on a joint financial statement affirming the veracity of information are not considered

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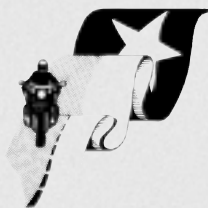
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sufficient to establish intent to apply for joint credit. A person's intent to be a joint applicant must be evidenced at the time of application, for example, by signature or initials on the application affirming the applicants' intent to apply for joint credit. A statement that "we intend to apply for joint credit in the amount of \$xxx," signed by "applicant" and "joint

applicant" will satisfy this requirement. A check-the-box section is another approach to satisfying this requirement.

Record Retention for Prescreened Solicitations

For offers of credit made to potential customers using prescreened solicitations, creditors must retain for 25 months:

1. the text of any

prescreened solicitation;

2. the list of criteria the creditor used to select both potential recipients of the solicitation and to determine who will actually be offered credit; and

3. any correspondence related to complaints (formal or informal) about the solicitation.

Expanded Definition of Adverse Action

The definition of an "adverse action" requiring notice to the applicant, has been expanded to include the termination of an account or an unfavorable change in the terms of an account that does not affect *all or substantially all* of a class of the creditor's accounts.

Source: NADA

Reminders and News From TMDA

Reporting IRS Cash Payments Over \$10,000

All cash payments totaling over \$10,000 received in a single or related transactions require the completion of the Internal Revenue Service Form 8300, "Report of Cash Payment Over \$10,000 Received in a Trade or Business", by the fifteenth (15) day after the date the cash was received.

Lemon Law Poster

Current TMDA members have been mailed a copy of the new "Texas Lemon Law" poster to display in the dealership in accordance with Texas law. If you did not receive the poster, please contact TMDA at 512/379-0425 to renew your membership today.

TMDA Sponsors Workshop

TMDA members are invited to attend the Fall Business Workshop of the National Association of Motor Vehicle Boards and Commissions, October 23-26, 2004 at the Hyatt Regency in San Antonio. TMDA is sponsoring the Continental Breakfast on Monday, October 25 at 8:30 a.m. For more information, please visit NAMVBC website at www.namvbc.org.

Condolences

TMDA expresses its deepest sympathy to the family and friends of Russell Allen, longtime owner and operator of Triumph of Houston and Russell Allen Cycles. Mr. Allen was a charter member of the Greater Houston MDA and actively raced motorcycles. TMDA has sent a contribution in memory of Mr. Allen.



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