11th Annual CFO/CEO Forum

METRY, ROBERTS GUIDE DEALERS ON REGULATIONS COMPLIANCE

Auto Team America sponsored its 11th annual CFO/CEO Forum on January 28, 2005, preceding the NADA convention in New Orleans. The explosion of new regulations that dealers are required to comply with was the focus of this year's forum.

Speakers for this year's event included **Paul Metry, Esq**., NADA Director of Regulatory Affairs; and **Jeff Roberts, Esq.,** Partner, Underwood and Roberts PLLC, who specializes in serving automobile dealerships.

Paul Metry started off the forum by presenting an update on several previously enacted regulations that affect automobile dealerships, including the Fair and Accurate Credit Transactions (FACT) Act of 2003, which went into effect on December 1, 2004; and the Gramm Leach Bliley Act of 1999, which encompasses the FTC Privacy Rule and the FTC Safeguards Rule.

Metry discussed how the FACT Act imposes several new duties designed to prevent identity theft, enhance the accuracy of credit reports, and provide consumers with greater control over the marketing solicitations they receive. Provisions of the FACT Act and how they affect dealerships include:

· If a dealership enters into a commercial transaction with a person who allegedly stole another's identity, the dealership must comply with the victim's request for a copy of the application and records of the transaction. This should be done within 30 days of a written request by the victim—and after verifying their identity.

· Consumers may place a *Fraud Alert* or *Active Duty Alert* on their consumer files. This requires dealerships to verify the consumer's identity and establish personal contact with the consumer, including when applications are made over the telephone or through the internet.

· Dealerships that maintain or possess consumer information derived from a credit report are required to properly dispose of such information. Metry recommended that dealerships outsource this process to a service provider who has the capability to comply with the regulations. However, the dealer is still responsible for oversight of the service provider if it is outsourced, including having an understanding of provider's security procedures.

· Dealerships may not print more than the last five digits of a card number or the expiration date on receipts provided to the cardholder.

· If you grant credit to a customer on terms that are "materially less favorable than the most favorable terms available to a substantial proportion of your other credit customers"—based in whole or in part on information contained in a credit report—you must give the customer notice in the form and manner prescribed by the Federal Reserve Board and the FTC. The FTC has yet to issue regulations about how dealerships are to comply with this section of the law.

· Affiliated companies may only use marketing information after consumers have had the opportunity to opt out from receiving that solicitation.

Metry also talked about some reminders for dealers under the **Gramm Leach Bliley Act of**

QUICK CHECK

Reviewing the amount and type of journal entries being posted is an easy way to check on the efficiency of your accounting department.

If numerous journal entries are being posted each month, it may be a sign of improperly trained staff or systems that are not functioning properly.

1999. Regarding the **FTC Privacy rule**:

· Non-public personal information (NPPI) includes any information pursuant to a finance or lease product. This information is protected and includes the customer's name and address.

· Verify that your privacy notice is accurate by identifying all sources of information, which may be more than just a credit application.

· Be aware that you may make disclosures that trigger the "opt-out" right. If you do, you need to track and adhere to "opt-out" elections.

· Do you restrict service provider/joint marketer disclosure of NPPI?

The **FTC Safeguards Rule** went into effect in 2003 and continues to have an impact on dealership operations. Metry asked the audience a series of questions to provide some guidance:

· Have you identified what is considered *customer information* in your dealership?

· Do employees with access to customer information have a business need for it? Too many employees have access to information that they do not need, so check all accesses.

· Are you as careful with credit applications as you are with cash receipts? The liability with credit applications is open-ended.

· Are you fulfilling all of your service provider responsibilities? It is more than just language in a contract—you must read and understand it.

· Are you documenting your compliance efforts? It's a very important undertaking that is part of the Safeguards Rule.

Jeff Roberts' presentation focused on the areas where he is seeing problems for dealers. His firm represents a large contingent of retail automotive dealers in the country. Some of the topics of interest in his discussion included:

· **Customer Arbitration Agreements.** Make arbitration agreements part of every deal and provide a separate agreement for customers to sign. It is also important to train salespeople about the purpose of the agreements so that they can explain this to their customers.

· **Employee Arbitration Agreements.** Require new hires to sign arbitration agreements. If you would like current employees to sign an arbitration agreement, you need to provide them with some consideration for signing it, such as a bonus or salary increase.

· **Indirect Lending**. Dealers are creditors unless the customer pays in cash or writes a check for a vehicle. Most defense attorneys fail to understand that relationship. As a result, dealers end up being liable for something that they should not be.

· **Retail Finance Agreements.** Dealers need to read and understand the entire agreement before signing because banks are rewriting non-recourse agreements with language that is very similar to recourse agreements.

· **Negative Equity Financing.** A dealer cannot raise the price of a vehicle to pay off the loan on a trade-in.

· **Fair Credit Reporting Act.** Every time a credit report is printed, the dealer should send it to a bank or other creditor no matter how bad the credit record. In doing this, the dealer is not required to send an Adverse Action notice because it transfers the reporting responsibility to the creditor.

· **Demo Agreements.** Written agreements are needed for everyone, including borrowed vehicles.

Overall, the CFO/CEO Forum was very informative for the dealers, general managers, controllers, office managers, and related industry associates in attendance. Both Metry and Roberts gave the audience a stark reminder of the mountain of regulations and compliance procedures faced by dealerships today.

Audio CD copies of the remarks by Paul Metry and Jeff Roberts are now available. To request a copy, please contact your local Auto Team America member firm.

TAX TIP

THE DEPRECIATION DECOUPLING NIGHTMARE

While the federal government has passed favorable tax legislation regarding accelerated depreciation, various states have decoupled from this favorable treatment. Conforming to the state regulations has resulted in additional taxes at the state level.

Under normal tax law, the cost of business fixed assets cannot be claimed fully as a business expense in the year of purchase but rather must be spread over the useful lifetime of the equipment. The 2002 federal tax law allowed companies to deduct up to 30 percent of the cost of the qualified fixed assets in the first year, as long as the item was purchased between September 2001 and September 2004. The new tax law expands the percentage to 50 percent, which expired in December 2004.

Every one of the 45 states with a personal or corporate income tax—except California—follows federal rules that allow dealers to deduct immediately, or "expense," the cost of up to $25,000 in qualified fixed assets purchases. The new federal law increases this amount to $100,000 for 2004, creating another decoupling problem.

A majority of states have decoupled from bonus depreciation. But some 13 states—Alabama, Colorado, Delaware, Florida, Kansas, Louisiana, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, and West Virginia—have not decoupled; another four decoupled only partially. (Missouri decoupled only through June 2003; North Carolina decoupled only through the end of 2003; and Oklahoma and Vermont decoupled for corporate tax filers, but not for businesses that pay taxes through the individual income tax. New Jersey decoupled for corporate tax filers since inception while decoupling for individual tax filers only in 2004).

The various changes made by the states have resulted in more complexity and onerous depreciation calculations. It is important that your accountant is aware of each state's requirements in order to attempt to minimize the tax effect of the decoupling.