

DEALER WINS DEMO INVENTORY TAX CASE

By Edward J. Castellani, J.D., C.P.A.

The Michigan Treasury Department has a long-standing policy of charging auto dealers use tax on the miles they put on demos and other vehicles held in inventory. Betten-Friendly Motors Company, through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., challenged the State's policy and filed a claim for a refund of the use tax Betten had paid to the State of Michigan for the past four years. The Treasury Department denied the refund request and argued that Betten had "converted" the vehicles to a taxable use when the dealership's customers or employees drove the vehicles. Betten's attorneys argued that the vehicles were purchased for resale and were exempt from use tax.

Betten appealed the State's denial of the refund request. On appeal the court agreed with Betten and ruled that the use tax paid by Betten must be refunded. In its opinion the court ruled that "the monitored and limited use of the vehicles by the dealership employees does not create a conversion of the property to taxable use and does not disqualify the vehicles from the use tax exemption." The State has not indicated whether it will appeal this decision.

This is a significant case for Michigan auto dealers and one that could eventually lead to the end of the State's pursuit of use tax on inventory.

Dealers that have paid use tax on vehicles in inventory under the 2½% plus \$30.00 per month formula suggested by Treasury Department may be entitled to a refund of use tax paid within the past four years. Dealers should contact tax counsel to discuss filing for a refund of tax paid and to determine whether the tax should be paid in the future.

Any questions on the Betten case and what it may mean for your dealership should be directed to Edward J. Castellani at 1-800-748-0436.

UAW ANNOUNCES DEALERSHIP ORGANIZING DRIVE

By John J. Loose and Ken Wilson, Attorneys

The UAW has announced that it is starting formal organizational attempts of many auto dealerships in Michigan, in particular, those with sizable employee sales. They can be expected to approach dealerships and offer to enter into a "business partnership" with the dealer and employees based upon a card check. A dealer should listen but should not look at the cards or agree to let a neutral look at the cards for him.

One common technique in Union organizing is to see if a dealer would be willing or foolish enough to recognize the Union as the exclusive representative of the dealer's employees on the basis of a card check. What is an authorization card, what is a card check and how should a dealer respond?

Continued...

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UAW ANNOUNCES DEALERSHIP ORGANIZING DRIVE CONTINUED...

The normal approach in union organizing is for a professional union organizer, aided by a small core of disgruntled and/or curious employees, to solicit the signatures of as many employees as possible on Union Authorization Cards. This is done in many ways – at beer parties, at formal meetings, informally at employee's homes, in the company lunch room. When the Union has a majority of employees in an appropriate bargaining unit who have signed cards, the Union may request that the dealer voluntarily recognize the Union for purposes of collective bargaining.

Typically Unions use what are called "Dual Purpose" authorization cards. This card says that the Union may petition the NLRB for an election or use the card directly to demand recognition from the employer. The language usually says something like "I hereby authorize the Union to act as my representative for collective bargaining or to seek a representation election." This is a power of attorney and should not be signed lightly. It authorizes the Union to act directly for the employee.

Unfortunately, employees are often misled or coerced at the time the card is signed. Sometimes the organizer or fellow worker says that the card is "just so we can have an election," even though it says much more than that. Sometimes employees sign just to get the solicitor off his back. Sometimes there are subtle forms of coercion, such as shunning, which cause an employee to sign. The NLRB will typically not look in to the circumstances under which cards were signed.

Often, after Union has a majority of cards, it will contact the dealer and offer to have the cards and the employees' signatures "checked," sometimes by the dealer itself and sometimes by a neutral outsider. This "fair" procedure is just an attempt to validate the cards which may well have been coerced.

Under no circumstances should you agree to a card check! If the Union has an apparent majority of signatures, the dealer will be legally obligated to bargain with the Union and, more importantly, **the employees will be deprived of their right under the labor laws freely to choose whether they wish to be represented after they have had an opportunity to learn about the pros and cons of Union membership.** A prudent dealer will always decline to recognize the Union and insist on a fair and free secret ballot election held by the NLRB as the means to determine the uncoerced will of its employees.

The best course of action is to insist on an election which will protect the rights of all employees.

If you have questions, call Ken Wilson or John Loose at 1-800-748-0436.

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