

NEWS BULLETIN

Maine Automobile Dealers Association

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TIME QUALITY DEALER HONOR TO BRIDGTON DEALER

Daniel Macdonald, president of Macdonald Motors, a Chrysler-Dodge-Jeep-RAM dealership in Bridgton, is one of a select group of dealers from across the country who was honored as a TIME Magazine Quality Dealer (TMQDA) at the 95th annual National Automobile Dealers Association (NADA) Convention & Exposition held recently in Las Vegas.

The TIME Dealer of the Year award is one of the automobile industry's most prestigious and highly coveted honors. Recipients are among the nation's most successful auto dealers who must also demonstrate a long-standing commitment to community service. Macdonald, 63, was chosen to represent the Maine Automobile Dealers Association – one of only 50 auto dealers, from 17,000 nationwide, nominated for the 43rd annual award. The award is sponsored by TIME Magazine in association with Ally Financial, and in cooperation with NADA.

A lifelong resident of Bridgton, Macdonald graduated from the local high school and earned his undergraduate and master's degrees in mathematics and administration from the University of Southern Maine, graduating in 1972. He was president of Tau Kappa Epsilon and on the dean's list in graduate school. "After college, I taught math for a short time at the Maine Correctional Institute before returning home to give the family business a fulltime try 39 years ago," he says.

"I grew up in the business, with my father starting the dealership after WWII in 1946," says nominee Macdonald. "At 5 years old, I would tape the temporary plates to the back window when customers took delivery at our home." He has worked in all positions at the store – from service writer and technician to parts manager – and today, Macdonald and his brother, Bob, jointly own Macdonald Motors and a Ford-Lincoln dealership in Conway, New Hampshire. Dan's son (Bill) and his niece (Mary) are general managers at Bridgton and Conway respectively. Macdonald Motors is a Chrysler Five Star dealership and has a high repeat sales and service clientele.

In the area of community service, Macdonald is a member of the Lions Club, Bridgton Chamber of Commerce and provides a representative to Lake Region High School's Automotive Advisory Board. He served as president of the Bridgton Revitalization Committee, a group that planned, designed, fundraised, oversaw and implemented a rebuilding plan for approximately one mile in the village. The plan replaced the road on Main Street and added new sidewalks and water system, upgraded the septic system, rebuilt the electrical and phone system, installed decorative lighting and built parks and a playground, along with a new town office/courthouse and police station.

This success was one of his most meaningful accomplishments. "My town's infrastructure was deteriorating, and downtown had many vacant buildings, which led to a less than desirable business climate," he explains. "We designed, funded and rebuilt Main Street, creating a business-friendly atmosphere to fill the vacant buildings and create jobs for our local people."

FEDERAL DOT BACKS UP NEW CELL PHONE USE RESTRICTIONS WITH STEEP CIVIL PENALTIES

Effective January 3, 2012, a new DOT regulation prohibits commercial motor vehicle drivers from using a hand held mobile device while operating a commercial motor vehicle. For the purposes of this regulation, a "commercial motor vehicle" is one which is over 10,000 lb. GVW or is hauling hazardous materials which requires placarding.

Drivers may only initiate, answer or terminate a call if it can be done by touching a single button on a cell phone, ear piece, steering wheel or instrument panel. A driver may not even reach for the phone if the driver cannot do so while remaining in a seated position and properly restrained by a seat belt. The rule includes a prohibition against reading or manually composing, while driving, an electronic message such as text messages, e-mails or other electronic communications. One obvious solution to this issue is to require drivers to pull off the road before utilizing an electronic communication device.

Drivers cited for violating this new rule are subject to federal civil penalties up to \$2,750 for each violation, and are subject to loss of license for multiple violations. In addition, employers found to have permitted drivers to use hand held cell phones while operating a commercial motor vehicle face a federal civil penalty up to \$11,000. In addition to this new DOT rule, Maine, like many states, has passed restrictive distracted driving laws that cover all drivers. All employers should consider adopting written policies limiting an employee's use of mobile devices while operating a motor vehicle as part of the employee's job.

WHY YOUR FACTORY AND CROSS-SELL SALES CAN BE WRONG?

Dealers remark to MADA with some frequency that the sales numbers shown on Cross-Sell and in some manufacturer reports do NOT properly reflect actual dealership sales, MADA is currently working with both the Maine Bureau of Motor Vehicles (BMV) and INFORME, the private entity which is the authorized seller of Maine's BMV data, to determine the causes for the inaccurate sales numbers.

While the BMV and INFORME operations may be part of the solution (more in future bulletins), dealership operations could also improve accuracy. **The title application is the most important document.** There are two (2) entries in box 28 on the title application which ensure accuracy from the dealership perspective – Dealer Type (check "D") and Dealer Plate Number. Please review your title applications to make sure these entries are completed and are accurate.

The second dealership operation to review is the timing of title application submission. Completed title applications should be forwarded to BMV daily – the quicker the mailing, the sooner the information gets into the BMV system.

A dealership's periodic review of these two internal operations will help improve the accuracy of the Cross-Sell and manufacturer sales reports.

MARK YOUR CALENDAR – MADA ANNUAL MEETING & CONVENTION JUNE 29 to JULY 1 AT HARBORSIDE HOTEL, BAR HARBOR

Once again due to popular demand, your Association's 2012 annual meeting and convention will be held over the weekend of June 29 to July 1 at the Harborside Hotel and Marina in downtown Bar Harbor. Mt. Desert Island, Acadia National Park, and Bar Harbor itself offer such a multitude of educational and recreational attractions that MADA dealers, family members and guests want to visit again this year. MADA is already at work on convention programming. If any dealer has suggestions for convention events, please contact your Association office. But, first and foremost, mark your calendar – you will want to be in Bar Harbor over the June 29 – July 1 weekend this year!

IRS PROVIDES TAX GUIDANCE RE: FACTORY IMAGE PAYMENTS

At NADA's recent Las Vegas convention, MADA visited with IRS officials to review proper tax treatment of various dealership operations. One area of discussion was manufacturer facilities image programs. Please find attached the IRS informational document on these payments. As always, dealerships are encouraged to discuss these issues with their CPA or tax professional.

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BMV TITLE PROCESSING TIME

Just as MADA hears from dealerships about sales accuracy, so too are dealerships calling about the time it takes before a lienholder or vehicle owner receives their title from BMV. Early retirements, BMV employee transfers, state budget restraints and the State hiring freeze have all combined to lengthen the time for title processing at BMV. There are currently significant backlogs at BMV for both new and used sales. At the present time, title on a brand new vehicle should be received by a lienholder or the owner about 4-5 weeks after the date of sale, assuming timely submission by the dealership. On a used vehicle sale by a dealership, which encompasses additional paperwork and usually a delay at the dealership as it waits for the prior title, the delivery of the new title to the new lienholder/owner will likely take 10-12 weeks from date of sale. MADA has held meetings with BMV to provide information which dealerships are receiving from retail lenders demanding their titles, letters which emphasize the potential liability on dealerships for not providing a new title.

What can a dealership do to help shorten the above time intervals? The first is to mail completed title applications and all supporting documents to BMV on the date of sale. To accomplish this mailing on a used vehicle sale, it is imperative to obtain or absolutely know the whereabouts – and expected receipt date – of the prior title. MADA realizes that the used vehicle sale requires the cooperation of the prior lienholder (if there was one), which can sometimes be a challenge. In the end, the quicker the completed title submission is mailed to BMV, the sooner the title will be processed and mailed.

MADA and BMV continue to discuss the need for more electronic transfer of information from dealerships to BMV, a transition which will not be available tomorrow, but which is advancing through the State's information technology system.

MADA SPRING EDUCATIONAL MEETINGS

April will be MADA's spring educational month. Regional meetings will be scheduled to review changes made by the Maine Legislature, issues raised by State and Federal agency regulators, and topics of a national nature affecting dealership operations. These regional meetings will be held in Presque Isle, Bangor, Augusta and Portland. In addition to these workshops for dealer principals and senior management, MADA will also hold an extensive series of Right-To-Know, Hazardous Waste, and Safety Director training sessions for dealership personnel affected by the laws and regulations. Please watch for announcement mailings, with registration materials, to be sent in mid-March.

SPOT DELIVERIES

Maine law specifies the disclosures which have to be made at the time of sale, as well as the steps that must be taken should the financing arrangements change and the customer cannot receive what was expected at the time of spot delivery. The enclosed page (white paper) provides the language of Maine law on one side (please pay particular attention to all costs reimbursable to the customer). The other side of the page provides a potential form which dealerships might utilize to meet their disclosure obligations in spot delivery situations. Whatever disclosure form your dealership drafts and utilizes in spot delivery situations must comply with the provisions of Maine law, and dealerships are required to follow the remedies detailed in the law in the event that the terms of a spot delivery sale cannot be met.

Obviously, there will be spot deliveries which will occur during the course of business at a dealership. While it is in everyone's best interest to totally understand the terms of the sale and to have these terms confirmed at the time of delivery, that is not always possible. However, dealership personnel must be aware of the requirements of Maine law with respect to the disclosures and remedies associated with a spot delivery situation. Please review the law with appropriate dealership personnel.

DEALER P & C INSURANCE and BONDING REQUIREMENTS

Maine law requires all licensed Maine dealers to submit copies of a valid bond, insurance policy, or R1348 filing (from Property and Casualty insurer) covering the period of their dealer license. The Bureau of Motor Vehicles (BMV) has sent licensed dealerships a letter stating that BMV is no longer able to assume the responsibility for informing you when your bond, insurance policy or R1348 requirements are about to expire within 30 days.

This policy became effective February 1, 2012. Therefore, it may be advisable for you to contact your insurance company periodically to ensure you still have a valid policy with them, and that you have provided the BMV Dealer Section with the proper documentation to renew your license. As required by law, BMV will deny or suspend dealer licenses for failure to maintain adequate insurance and bonds.

Should you or your insurance company have questions regarding these requirements on Maine Dealers, please feel free to contact your Association office or the BMV dealer section at 624-9000, extension 52143.

NADA UNIVERSITY TRAINING

As part of your membership in the National Automobile Dealers Association (NADA), and all Maine franchised dealerships are NADA members, dealerships have access to a variety of training and educational materials at NADAuniversity.com. Please find below some information on recent additions to those offerings, and the NADA University toll free number for any questions or assistance you or your personnel may need:

1. Online Training at NADAuniversity.com in Learning Hub, Internet:

The 2012 NADA-ATD Convention presented **13 Internet Solutions workshops**, including “Ten Digital Marketing Strategies that Work Now,” “Connect with Transparency,” “The Five Most Important Digital Reports for Dealers,” “Improve Your Online Reputation,” and “Your Dealership’s Presence Across Google Platforms.” They will be online in the Learning Hub by March 9 – and recordings may be purchased now in various formats at the NADA U Store!

Also, NADA U is presenting a series of **four NADA-Google webinars** as a member benefit! “The Smartphone Revolution” and “The Google + Project for Dealers” are available now, on-demand (and available to non-members for purchase in the NADA U Store).

2. Online Training at NADAuniversity.com in Resource Toolbox, Internet:
 - a) Internet Process Management Checklist (**Driven** Management Guide)
 - b) Leveraging the Internet to Drive Sales (**Driven** Management Guide)
 - c) Use Video to Drive Virtual Sales (MarketINSIGHT webinar)
 - d) Car Shopping’s New Normal (MarketINSIGHT webinar)

Visit www.NADAuniversity.com, sign in with your NADA member number, immediately access your complimentary resources or click on NADA U Store to purchase other resources. Call **800.557.6232** for assistance.

BE AWARE OF EMAIL APPEARING TO BE OFFICIAL

Recent messages appearing to be from the Federal Trade Commission (FTC) and the national office of the Better Business Bureau (BBB) contain subject lines something like “Pending Customer Complaint – URGENT”. These messages have NOT been sent by the FTC or BBB, but instead contain computer virus or malware, i.e. TROUBLE for your system. Please be careful in opening any links to messages appearing to come from official sources – generally agencies do not initially contact businesses in such a manner when there is a problem.



IRS

Factory Image Upgrade Payments

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**Motor Vehicle
Technical
Specialist
February, 2012**

Introduction

In recent years, many automobile manufacturers implemented programs intended to encourage dealers to construct new dealership property or upgrade and enhance their current locations. Each manufacturer's program is unique. But the various programs all generally provide payments to dealers related to the facilities upgrades.

The programs are not new and similar programs may be found in other retail industries such as gas stations and fast food establishments. Recently, the proper tax treatment of the issue as it relates to auto dealerships has become a topic of increased conversation and generated inquiries to the Motor Vehicle Technical Specialist Program (MVTSP). The MVTSP program does not have access to and has not analyzed all programs nor is there any official IRS guidance. However, this document will briefly address the issue and consider current tax law and guidance in light of the facts as we know them.

Programs and Types of Payments

The programs vary by manufacturer. But all include some form of payment to dealers intended to encourage dealers to upgrade their dealership facilities. Plan documents for each program must be reviewed individually and the facts and circumstances unique to each program must be considered.

Generally, each program provides the dealer with payments provided that they meet factory timelines, facility standards, and other program rules. Timing of the payments can vary by manufacturer and perhaps even by dealership. Some programs provide payments based only on completion of various construction milestones. Others provide payment based upon the number of vehicles purchased or sold. But in the programs we've seen to date, most, if not all, of the payments related directly to the facility upgrade construction.

What Are The Tax Questions Related to Imaging Payments?

Simply put, how should the payments be classified and reported for tax purposes?

Some in the industry maintain that all imaging payments must be reported in income. Others claim that the payments should be excluded from income and perhaps reduce the basis of the property being renovated and/or constructed.

Various arguments have been advanced to support all of the above possible treatments. Some believe that the body of available law strongly supports including the payments in income. Others advance the theory that the payments are a non-taxable inducement to the dealership to engage in the facility upgrade or that the payments are merely a payment by the manufacturer of dealership expenses and that the proper treatment is to reduce the depreciable basis of the property. Others argue that the payments are loans from the manufacturer to the dealership.

How Does Current Tax Law Apply to Imaging Payments?

Although the need for and possibility of formal guidance is still being considered, current tax law and guidance supports the inclusion of facility upgrade payments in income. The Internal Revenue Code (IRC) and Regulations, several court cases, and various rulings and administrative guidance support this conclusion. *(The following discussion is*

intended only as an overview and may not include all applicable guidance.)

IRC section 61 defines gross income as all income from whatever source unless specifically excluded.

IRC section 118 provides that, in the case of a corporation, gross income does not include any contribution to the capital of a taxpayer, whether the contribution is by a shareholder or nonshareholder. (Note that section 118 only applies to corporations. There is no comparable rule for partnerships or LLCs.) The classic contribution to capital contemplated by section 118 would be the value of land or other property contributed to a corporation by a governmental unit for the purpose of inducing the corporation to locate its business in a particular community.

Section 118 also provides, however, that a "contribution to the capital of a taxpayer" does not include any contribution in aid of construction, or any other contribution as a customer or potential customer. In most of the imaging programs with which the Service is familiar, the payment from the manufacturer to the dealership is to aid the construction of new facilities or to renovate existing facilities. It's also clear that an automobile dealership and the manufacturer have a customer relationship. The regulations elaborate on this, stating that a contribution is not excluded under section 118 when money or property is transferred to the "... corporation in consideration for goods or services rendered." Goods and services flow both ways between the manufacturer and the dealership. And, as described in the following case, a manufacturer that pays a dealer to construct facilities often expects to receive significant benefits in return.

The case of John B. White, Inc. v. Comm'r, 55 TC 729 (1971), addressed a situation similar to modern imaging payments. In White, Ford Motor Company (Ford) paid a dealership cash to induce the dealership to move its operations. Ford believed that moving the dealership to a more desirable location with a more attractive and better equipped building would increase the sales of Ford products and enhance Ford's image.

The Tax Court ruled that the payment was includible in the dealership's income and was not excludible as a contribution to capital under IRC section 118. The Court first cited IRC section 61 and noted that the payment from Ford enhanced White's wealth and allowed the dealership to acquire improved facilities and at a more advantageous location.

The Court also addressed the potential for excluding the payment under IRC section 118 and concluded that Ford made the payment in expectation of enhanced promotional activities by White through the use of the new facilities. The Court noted that Ford anticipated increased sales of its products and enhancement of the Ford image from the new facilities; the benefits that Ford anticipated were neither indirect nor intangible. As a result, the Court concluded that the payment was not excludible from the dealership's income.

Conclusion

In general, analysis of a number of legal authorities, some of which are cited above, lead to the conclusion that manufacturer payments to auto dealerships for facility and image upgrade payments should be reported in income. The White case in particular appears to be on point with the general facts surrounding the payments and should be considered carefully when evaluating the proper treatment of image upgrade payments. Additionally, each program must be evaluated individually and treatment determined based on the facts and circumstances of those facts.

SPOT DELIVERY DISCLAIMER

This addendum shall be incorporated into the Retail Buyers Order (*Retail Installment Contract*) dated _____ in regard to the vehicle described as follows:

YEAR _____ **MAKE** _____ **MODEL** _____ **VIN** _____

The undersigned customer understands and acknowledges that credit approval for the terms agreed upon in the Retail Buyers Order (*Retail Installment Contract*) identified above has not been obtained at this time. The undersigned customer further understands and agrees to return the above referenced vehicle to (dealership name) in its original condition immediately (no more than 24 hours) upon notification of credit denial.

The undersigned customer further understands that credit approval may take some time, and hereby agrees not to register the above referenced vehicle or to pay any taxes until (dealership name) notifies the undersigned customer that credit approval has been obtained, which will be no later than two (2) business days after customer began to drive the vehicle.

If financing cannot be obtained for the terms agreed upon in the Retail Buyers Order (*Retail Installment Contract*) identified above, the customer shall receive:

- a) reimbursement of the entire vehicle purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle;
- b) reimbursement of all charges pertinent to the contract, including, but not limited to, sales tax, license and registration fees and similar government charges; and
- c) the vehicle traded in or, if the vehicle is not available, the trade-in value of the vehicle established in the contract.

Sections a, b and c above do not apply to any sale cancelled by (dealership name) due to material misrepresentation made by the undersigned customer.

The undersigned customer understands that (dealership name) does not provide any insurance coverage on the above referenced vehicle, and that it is the undersigned customer's responsibility to secure and maintain liability, property and comprehensive insurance coverage.

The undersigned customer has read and understands the above information, and acknowledges receiving a copy.

Date: _____ Customer Signature: _____

Date: _____ Customer Signature: _____

Maine Revised Statutes

- §1194 PDF
- §1194 WORD/RTF
- STATUTE SEARCH
- CH. 204-A CONTENTS
- TITLE 10 CONTENTS
- LIST OF TITLES
- DISCLAIMER
- MAINE LAW
- REVISOR'S OFFICE
- MAINE LEGISLATURE

§1193

Title 10:

§1196

COMMERCE AND TRADE
Part 3: REGULATION OF TRADE
Chapter 204-A: DEALER PRACTICES FOR
CERTAIN MOTOR VEHICLES

§1194. Dealer sale practices for new or used motor vehicles

When selling new or used motor vehicles a dealer must adhere to the following sale practices. [2001, c. 256, §2 (NEW).]

1. Dealer revocation of sale. If a dealer sells a new or used motor vehicle and allows the buyer to take possession of it, the dealer can not at a later date inform the buyer of that vehicle that the dealer is canceling the sale unless the dealer has disclosed at the time of the sale and at the time of cancellation that if financing can not be procured according to the terms agreed upon in the contract, the consumer shall receive:

A. Reimbursement of the entire vehicle purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle; [2001, c. 256, §2 (NEW).]

B. Reimbursement of all charges pertinent to the contract, including, but not limited to, sales tax, license and registration fees and similar government charges; and [2001, c. 256, §2 (NEW).]

C. The vehicle traded in or, if the vehicle is not available, the trade-in value of the vehicle established in the contract. [2001, c. 256, §2 (NEW).]

This subsection does not apply to any sale canceled by the dealer due to material misrepresentation made by the buyer.

[2001, c. 256, §2 (NEW) .]

SECTION HISTORY

2001, c. 256, §2 (NEW).

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**The Revisor's Office cannot provide legal advice or
 interpretation of Maine law to the public.
 If you need legal advice, please consult a qualified attorney.**

Office of the Revisor of Statutes

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