

NEWS BULLETIN

Maine Automobile Dealers Association

180 Civic Center Drive P. O. Box 2667 Augusta, Maine 04338-2667 DIAL 623-3882
e-mail:info@maineautodealers.com FAX 623-2318

2016-7

DISTRIBUTION

- General Manager
- Office Manager
- Parts Manager
- Sales Manager
- Service Manager

NON-COMPLIANT ADVERTISING on WEBSITES

From time to time some manufacturers insert advertising items into dealership websites. Dealerships do not have control of this inserted material, nor do dealerships have the ability to change any of this content. Some of this content includes promotions of financing terms. These financing terms are at times **not compliant** with federal and state Truth-in-Lending and Truth-in-Leasing disclosure regulations.

All of the above are facts which arose in a recent enforcement action by Maine's Bureau of Consumer Credit Protection (Bureau) involving Subaru dealership websites. At first, the Subaru dealerships received letters from the Bureau indicating the non-compliance and requesting a signed agreement in which the dealership acknowledged the problem and paid a fine. After MADA met with the Bureau and dealerships provided the factual information outlined in the first paragraph, the Bureau contacted Subaru of America (SOA). The results of subsequent discussions between the Bureau and SOA are evidenced in the enclosed copy of the Assurance of Discontinuance signed by Subaru of America.

The Bureau has asked MADA to provide this information to all Maine dealerships, and to advise that the Bureau continues to review various forms of dealership and manufacturer advertising. The Bureau will also be contacting other manufacturers about their responsibility on placement of compliant promotional material in dealership websites.

MADA'S 2016 ANNUAL MEETING AND CONVENTION

Your Association's 2016 Annual Meeting will be held on Friday morning, June 17, in the historic Bar Harbor Club on the beautiful grounds of the Harborside Hotel, Spa and Marina located ocean-side in Bar Harbor, Maine. The official notice of this annual meeting is enclosed.

MADA's annual meeting and convention is a time for dealers, dealership personnel, allied industry representatives, family members and guests to gather for a variety of educational, recreational, and social events in a very picturesque setting on the coast of Maine. It presents an opportunity to learn more about the major issues currently facing Maine dealerships, to understand some events of the next 6-12 months which will impact your operations, to renew friendships and establish new acquaintances, and to enjoy the multitude of attractions on Mt. Desert Island and in Acadia National Park.

Our business agenda will include a presentation by a NADA Attorney on the subjects of recalls, the electric vehicle sales mandate, and federal labor law issues affecting services writers and salaried individuals. Issues such as medical and recreational marijuana usage, income tax surcharges, and minimum wage levels on automatic pilot will come before Maine voters in referendum this Fall, and we will discuss the impact on dealerships. The Maine Legislature has completed its 2016 session, with a variety of laws amended or put out for study – we will review those affecting dealership operations. Future workers compensation and health insurance topics influencing dealerships and their employees are agenda items as well.

Bar Harbor is the place to be on June 16, 17 and 18 for a learning yet relaxing time. Join your fellow Maine dealers, and industry friends, for MADA's 2016 event. Register today – contact your Association office if you need registration materials.

LEASE DISCLOSURE OBLIGATIONS CHANGE

Lease contracts issued in Maine require a disclosure which estimates future costs of the vehicle's registration during the term of the lease. Maine Revenue Services and the Bureau of Consumer Credit Protection have collaborated on a clarification to the method of computing the excise tax cost to be included in this lease disclosure. Please carefully review the enclosed Memo on the subject. Should you have any questions, please feel free to contact your MADA office.

“SWAP” DRIVERS

The opinion of IRS and State taxing authorities, as well as federal and state Departments of Labor, is that “swap” drivers should be treated as employees with respect to withholding and payroll taxes. It is highly unlikely that these folks could qualify as independent contractors. This subject is a point of emphasis by these federal and state agencies.

CFPB PROPOSES ARBITRATION REGULATION

The federal Consumer Financial Protection Bureau (CFPB) has indicated that it will regulate arbitration clauses in financial contracts. It is unclear at this time how the regulation would impact arbitration agreements utilized by some new vehicle dealerships. A coalition of dealer associations, including MADA, is reviewing the 300-plus page regulation and will prepare comments on behalf of new vehicle dealerships, with the comments to be filed during the public comment period. MADA will continue to provide updates.

CREDIT CARD ISSUES

As most of you are aware, there has been a big change in the relationship between merchants that accept credit cards and the banks that issue them. This “liability shift” happened October 1 and impacts face-to-face payment transactions involving cards with an EMV chip on the front. You'll recall that the liability shift means that the organization with the least secure system now assumes risk for a counterfeit transaction. If you, the merchant, have not **upgraded** your terminal and you process a chip card whose alternative magnetic stripe has been recoded and is now a “counterfeit card”, you assume liability for that transaction. About 10% of chargebacks since October have involved EMV cards used at merchants which have **not** upgraded their processing terminals.

As we get further into the world of EMV, expect the number of **chargebacks** to rise, because the bad guys will have fewer and fewer places to use those cards. If all other merchants in your community have upgraded and you are the only one with an old terminal, the bad guys will figure that out and focus on your business as a place to use those cards. It is analogous to being the only car in the parking lot with the windows rolled down and no one in it; the thief will target that car because it is an easy target.

The other place expected to see an increase in the use of fraudulent cards is online purchases. If you have any sort of online retail presence you should already be developing a plan to thwart the bad guys. As we shut down face-to-face fraud, it is expected to cause online fraud to spike. Make sure you are preparing your business and your staff for these changing times. No one wants to be the poster child for what not to do.

MAINE AUTOMOBILE DEALERS ASSOCIATION, INC.

180 CIVIC CENTER DRIVE

P. O. BOX 2667

AUGUSTA, MAINE 04338-2667

NOTICE OF ANNUAL MEETING

OF THE

MAINE AUTOMOBILE DEALERS ASSOCIATION, INC.

Please take notice that the Annual Meeting of the members of the corporation will be held at the Bar Harbor Club of the Harborside Hotel & Marina in Bar Harbor, Maine on Friday, June 17, 2016 at 8:15 a.m. to transact the following business:

1. Election of the Board of Directors and other Officers of the Corporation.
2. To Receive the Annual Reports of the Treasurer and Officers of the Corporation.
3. To Receive the Report of John T. Emerson,
N.A.D.A. Director for Maine, on N.A.D.A.'s Activities.
4. To Receive the Annual Report of the M.A.D.A. Insurance Trust.
5. To Receive the Annual Report of the M.A.D.A. Workers Compensation Trust.
6. To Transact Such other and further Business as may legally come before Said Meeting.

Dated this 12th Day of May, 2016.

Attest: _____
Clerk



Paul R. LaPage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

William N. Lund
SUPERINTENDENT

TO: New Car Dealers
FROM: Terry Fancy, Principal Examiner, Bureau of Consumer Credit Protection
DATE: May 9, 2016
RE: Lease contracts; Change in Formula for Disclosure of Estimated Excise Tax

We are writing all dealers who lease automobiles to consumers, to request a change in the way that you estimate excise taxes for disclosure on lease transactions.

As you know, this excise tax calculation is disclosed as part of the total amount of estimated taxes and fees the consumer will pay out over the term of the lease. The total estimated cost is disclosed in the lease agreement under the heading, "Estimated fees and taxes."

As a result of a regulation change at the Maine Revenue Service, we realized that our Bureau's calculation of estimated excise taxes on lease agreements was different. Historically, when calculating the estimated excise taxes over lease term we used the "agreed upon value of the vehicle". In accordance with 36 M.R.S §1484(3)(D) if a motor vehicle is leased for a period of one month or longer, the excise tax must be paid where it would be paid if the lessee were the owner.

With this in mind, Title 36 M.R.S §1481(2) of the Maine Revenue Services Property Tax Division defines **Maker's list price as**, "Maker's list price" in the case of vehicles manufactured in the United States means the retail price at the point of manufacture, less the federal manufacturer's tax. "Maker's list price" in the case of vehicles manufactured outside the United States means the retail price at the nearest port of entry. In either case, "maker's list price" includes the manufacturer's suggested retail price of all accessories and equipment which is a part of the vehicle at the time the excise tax is paid.

Therefore, the manufacturer's suggested retail price ("MSRP") shall be used in place of the agreed upon value of the vehicle.

For example, for a 48-month lease on a \$36,000 vehicle, the Maine Revenue Services calculation would be as follows: **\$36,000 (manufacturer's suggested retail price) x .065 (48 month lease factor rate) = \$2,340.00**

Maine Revenue Services continues to use the following weighted factors based on the lease term:

12 months:	.0240
24 months:	.0415
36 months:	.055
48 months:	.065
60 months:	.0715

If the term of a particular lease falls between one of the above values, then you should utilize the factor for the next higher term. **For example, if the lease term is 39 months, use the factor of 48 months.** This will result in disclosing a higher estimated total tax than if the fees were based on an extrapolated factor for the actual number of months. However, please note that use of the next-higher term factor will not result in a disclosure variance that is *out of tolerance under the Truth-in-Leasing regulation, Federal Regulation M.*

The purpose of this memo is to notify all dealers that our Bureau will be adopting Maine Revenue Service's method of calculating estimated excise taxes. This will result in increased consistency between the state agencies, and will bring uniformity to the formula for estimating excise taxes.

We ask that all dealers begin utilizing the more precise formula as soon as possible, and that the transition to that method be completed within 60 days of the date of this memo.

Please contact our office with any questions you may have about the revised lease formula for determining estimated excise taxes. Thank you.

Sincerely,

Terry Fancy
Principal Examiner

STATE OF MAINE
KENNEBEC, ss.

BUREAU OF CONSUMER CREDIT PROTECTION
DOCKET NO. 2016-0100

IN RE:

SUBARU OF AMERICA)
SUBARU PLAZA)
P. O. BOX 6000)
CHERRY HILL, NJ 08034)

ASSURANCE OF
DISCONTINUANCE

NOW COME the parties and stipulate to the following facts:

1. The Maine Bureau of Consumer Credit Protection (the Bureau) is Responsible for administering and enforcing the Maine Consumer Credit Code, Title 9-A of the Maine Revised Statutes, and Regulations M and Z of the Consumer Financial Protection Bureau, which have the force of law for creditors doing business in this State through Maine Regulation 02-030-240.
2. Subaru of America ^{through an independent distributor,} provides automobiles ~~and trucks~~ for sales and leasing by independently owned and operated dealers in Maine, and as a part of its support of these dealers from time to time posts advertisements on "Subaru Incentives & Offers" pages on the websites of Subaru dealers or creates newspaper advertisements for publication by the dealers. *RAJ*
3. 9-A M.R.S. § 3-201(1) prohibits false or misleading advertising in conjunction with consumer credit transactions.
4. Federal Regulation Z (truth-in-lending) provides that "[i]f an advertisement states a rate of finance charge, it shall state the rate as an 'annual percentage rate,' using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. . . ." 12 C.F.R. § 1026.24(c).
5. In January 2016, various advertisements were posted on-line or in a local newspaper for at least three Subaru dealers. One was for a 2015 Subaru BRZ coupe with "0.9% Financing on all new 2015 Models . . . Now through February 1, 2016 get 0.9% Financing on all new 2015 BRZ Models." Another was for a 2016 Subaru Crosstrek SUV with "1.49% Financing on all new 2016 Crosstrek Models . . . Now through February

1, 2016 get 1.49% Financing on all new 2016 Crosstrek Models." A third was for a 2015 Subaru Impreza Sedan with "1.49% Financing on all new 2015 Impreza Models . . . Now through February 1, 2016 get 1.49% Financing on all new 2015 Impreza Models." Fourth, a newspaper advertisement of one dealer stated, "As low as 1.40% Financing on Select Subarus," and referred to the named dealer as "Maine's #1 Subaru Dealer!"

6. These advertisements did not state the annual percentage rate, using that term.

NOW, THEREFORE, the parties, pursuant to 9-A M.R.S. § 6-109, agree:

1. Subaru of America acknowledges that its advertising, as specified in paragraphs 5 and 6 above, does not comply with state and federal truth-in-lending laws. See paragraph 4 above.
2. Subaru of America promises to undertake appropriate measures to ensure that its print, broadcast, and electronic advertising complies in the future with such regulations. This is to include proof-reading all print, broadcast, and electronic advertisements before they are published or aired, monitoring advertisements once published or aired, and entering onto the websites of its dealers that information required by truth-in-leasing and truth-in-lending laws.
3. Subaru of America agrees to implement procedures to monitor more effectively its advertising to avoid errors such as occurred in the instances cited in this assurance of discontinuance. Subaru of America will ensure that any advertisements for which it has contracted for publication, by print or broadcast media, or by electronic means, will be altered, as necessary, before publication to comply with state and federal truth-in-leasing laws and truth-in-lending laws.
4. Subaru of America agrees that the Bureau may take this assurance of discontinuance into account in assessing civil penalties and costs should there occur any other violations of relevant truth-in-leasing or truth-in-lending laws in the future.
5. The Bureau will post this assurance of discontinuance on its public website.
6. The Bureau otherwise agrees to close this matter upon Subaru of America signing of this assurance of discontinuance and, paying a civil penalty of \$900, payable to "Treasurer, State of Maine," and costs of \$500 for the Bureau's researching and enforcing this assurance of discontinuance, payable to the "Bureau of Consumer Credit Protection,"

within 10 days of the signing by the signatory representing Subaru of America upon the signatory's receipt of this assurance of discontinuance.