



Auto Advisor

Accountants Serving the Automotive Industry

Henderson Hutcherson & McCullough, PLLC, is a Chattanooga-based certified public accounting firm specializing in automotive accounting.

Please contact Chet Logan, Donnie Hutcherson, or Travis Horton with any questions or comments 423.756.7771.

Visit our website at: www.hhmcpas.com

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13th Annual CFO/CEO Forum

13th ANNUAL AUTO TEAM AMERICA CEO/CFO FORUM A SUCCESS!

We've all heard the saying before, so attendees were no "What happens in Vegas stays in Vegas," but that won't be the case with the jackpot of information presented at Auto Team America's 13th annual CEO/CFO forum held Friday, February 2, 2007. The presentations gave attendees a wealth of ideas and techniques to help them cash-in during the coming years.

Featured speakers at this year's event included **Michael Bruynesteyn, Mike Schwartz, and John Reed.**

Bruynesteyn is an investor at Lehman Brothers in New York and has an active interest in the auto industry. He has spoken at ATA's CEO/CFO forum

strangers to his valuable insight to the dealership community. As in past speaking engagements at ATA events, Bruynesteyn offered invaluable information pertinent to the automobile dealership industry and maintained his status as one of the group's favorite presenters. It should be noted that Bruynesteyn is now an ATA Associate Member.

Schwartz is a living, breathing success story. In 1994, he purchased a struggling dealership, Harley-Davidson of Wilmington, and with only five employees and four years of hard work, he built Mike's Famous Harley-Davidson into a mega dealership that outgrew its facility and helped spawn the

world's first Harley-Davidson dealership that included a museum and restaurant all under one roof. Today that dealership is the world's largest selling dealership of new Harleys® anywhere. He explained to the group that when he opened his motorcycle dealership, he did so with the plan to make it a "destination" – not just a retail point. His idea has worked so well that he recently purchased a Chrysler dealership in hopes of doing the same with it. He shared the struggles and successes associated with purchasing an automobile dealership and his stories were well received.

(See Post-forum on page 2)

TITLING ISSUES: A HIDDEN SOURCE OF CONTINGENT LIABILITY?

Do you know how titling procedures are handled in your dealership? Are liens being timely filed? How many contracts might you be liable for in the event of default, or because you cannot provide the lender with a title that has a properly recorded lien?

If you cannot answer these questions, please read the following information before you begin investigating your dealership's practices.

Bankruptcy & Lien Perfection

October 17, 2005 was an

important date for many dealerships and lenders because it was the effective date for some key provisions in the new bankruptcy legislation that was signed into law by President George W. Bush just six months earlier.

Prior to that monumental date, the lien perfection window under bankruptcy law was a mere 20 days. Historically, for most vehicle deals, this would have provided adequate time for a dealership to properly record a lien on a financed deal assuming, of course, that this deal was not on a trade-in with an existing title problem.

With the ever-increasing volume of secondary paper and Buy Here, Pay Here (BHPH) operations, the new 30 day provision enacted under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (2005 Act) now provides dealers with an extra ten days. This can be critical when dealing with secondary lenders, many of whom take weeks to review and verify the actual loan package and fund, or possibly not fund, the deal.

The issues revolving around those lenders who ultimately return a secondary deal to the dealer weeks after

(see Titling on page 2)

2007 ISSUE 2

(Post-forum continued from page 1)

Reed is responsible for developing Microsoft's automotive retail vertical strategy, solutions portfolio, cross-region communications, sales and partnering, and go-to-market initiatives with OEMs, retailers and suppliers worldwide. Reed's most fascinating information involved the future—he explained that Microsoft hopes to have a baseline product available early next year that will equip vehicles with computers that communicate to both the

driver and the dealership (at which it was purchased), and relay such information as scheduled maintenance, recalls, updates, etc.

ATA was pleased with both the attendance at the forum and the quality of information provided. Many thanks go to all who made the event a success.

We hope that you will join us in 2008 in San Francisco, and also in 2009 in New Orleans!

(Tiling continued from page 1)

delivery have conditioned title clerks and office personnel to delay filing the title documents to make sure that the lien holder does not change and that the deal is finalized as determined by receipt of contract proceeds.

This can be attributed to being concerned with the paperwork nightmares that can occur if the lien holder is changed after the title is issued. However, the real loss may occur because a lien is not properly and promptly filed, and your "credit challenged" customer files bankruptcy. Without a timely recorded lien, the lender may lose the collateral and the dealer may be required to make the lender whole under the terms of their Finance Agreement.

Bankruptcy & Lien Stripping

One other provision included in the 2005 Act impacts lenders, including those dealers who have BHPH operations or provide in-house financing. Prior to the new law, under a Chapter 13 debt reaffirmation, the lender often came out on the short end with a *cram down* in their loan balance to the current value of the collateral. Also called *lien stripping*, the 2005 Act included a provision that a

loan value adjustment would no longer be allowed if bankruptcy were filed within 30 months of incurring the debt.

Consequences of Failing to Provide Lender with Title

In addition to those issues that may arise if your customer should file bankruptcy, most of your Finance Agreement documents that are executed when you sign up with a new lending source address such key issues as disclosure of the terms of sale and your dealership's responsibilities of performance under this contract, which will include your obligation to provide a properly recorded title and lien on behalf of the lender. These contracts will also dictate the lender's course of action, or recourse, back to your dealership in the event that you fall short of the agreed-upon performance standards.

Titles, or rather lack thereof, can trigger a default and result in a demand for payoff of the underlying loan. While many lenders do not exercise this right, they nonetheless do not relinquish it. Are you aware of any open title lists or title letters being received from lenders for missing titles? These could represent a significant contingent liability for your dealership

TAX TIP

HAVE YOU PLANNED FOR THE AMT?

If you will recall, Congress recently passed the Increase Prevention and Reconciliation Act (Tax Reconciliation Act), which includes a provision to increase the amount of the alternative minimum tax (AMT) exemption amount for married individuals filing jointly and surviving spouses to \$62,550 (\$42,500 for unmarried individuals other than surviving spouses). However, despite this increase, it is no secret that AMT is trapping more middle-income taxpayers. At a tax rate of at least 26 percent imposed on AMT items, in addition to your regular tax bill, your alternative minimum tax exposure is a situation that should be addressed.

The best way to handle AMT liability is to have your future income tax liability and alternative minimum tax liability projected accurately under several scenarios. An overall plan must then be devised to manage your AMT liability without raising regular tax liabilities. In order to achieve the best results from this joint planning approach, it is also necessary to look at your projected income, expenses, and deductions over multiple years. As a general rule, it is best to accelerate items of income into AMT years and postpone deductions into non-AMT years.

Depending on your exposure to the AMT in 2007, the following review of these possible tax planning strategies could help your situation:

- Delay payment of certain items, such as state and local income taxes, property taxes, medical expenses, and miscellaneous expenses (provided this does not impair your credit status or business standing or cause you to incur late charges);
- Postpone charitable contributions;
- Avoid the exercise of incentive stock options;
- If large long-term capital gains will affect your AMT, delay the asset sale until after year-end or spreading the gain over a number of years by using an installment sale;
- Make use of any AMT credit, if applicable.

To discuss this important tax planning opportunity further, please contact your local ATA representative.

above any issues related to failure to timely perfect a lien.

Another issue could be that your customer pays a lender in full on their loan, and the lender has never received a title, because the dealership has not been able to provide one. Now you have a customer needing their title and the problem lands at your doorstep. The customer may want to sell their vehicle, but they are unable to do so because you have never provided that customer (or the lender) with a title. What are the legal issues you may now be facing?

Where Do You Go From Here?

You must make this often overlooked, yet critical step, in the selling process the important priority that it truly should be. Remember that establishing and maintaining proper controls can provide you with an internal insurance policy to protect retention of your bottom line profit.

Please contact HHM at 423.756.7771 for more assistance in handling these internal controls.