

You AUTO KNOW®

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FTC Investigations and Form 8300 \$10,000 Compliance!

FTC Investigations

As you are aware, past *You Auto Knows* have discussed website advertising, Internet advertising, the use of smart phones by salespeople, Tweets and the need to comply with various state and federal advertising rules and regulations. From extensive experience with the Attorney General's Office, this author has handled numerous Attorney General complaints about dealer advertising regarding all of the above.

In Ohio, the primary method of enforcement, other than dealers policing themselves and/or associations doing the same, was the enforcement arm of the Attorney General's Office. Recently, another entity has begun flexing its muscle regarding advertising compliance.

The Federal Trade Commission ("FTC") is reviewing dealer advertising and enforcing compliance. In September 2013, the FTC released a statement regarding its enforcement of advertising regulations against two automobile dealers - one of which was a local dealer. In the statement, the FTC said that it "works for consumers to prevent fraudulent, deceptive and unfair business practices and to provide information to help, spot, stop and avoid them." It provided information to consumers on how to file a complaint.

In the investigation, the FTC charged the two dealers with falsely advertising the cost of automobiles and the available discounts for specific automobiles. In part, the FTC stated that it is enforcing the investigations and settlements regarding violations to stop dealers from advertising discounts or prices unless they clearly and conspicuously disclose any qualifications, restrictions or other parameters regarding applicable manufacturer or financing programs.

In one instance, the dealer was advertising discounts and other prices that were not available to every consumer; an obvious example of this would be rebates or discounts specifically for college students or military personnel. Further, the dealers were misrepresenting the type of vehicles to which the discounts applied. In a specific instance, discounts were only being applied to high-line vehicles and not the less expensive vehicles being advertised. The one dealer's website advertised specific "dealer discounts" and specific "Internet prices," but did not disclose what consumer qualified for the numerous, minor rebates that were not available to every consumer. Further, in many instances, even with all the rebates, the customer still did not obtain the vehicle at the advertised price.

The consent agreements the dealers entered into were fairly extensive. The dealerships cannot advertise prices or discounts unless the qualifications are clearly disclosed regarding the applicability to specific customers. They are further barred from misrepresenting the existence of any discounts, rebates, bonus incentives or prices, the existence of any price value coverage or features of any product associated with the motor vehicle unless specifically disclosed, the number of vehicles available at specific prices and any other material fact or price regarding the sale, financing or leasing of a vehicle.

Further, the dealers must maintain the records for all advertisements and promotional materials and produce them to the FTC for inspection upon request for a period of five years and are required to comply with any and all FTC orders for the next 20 years.

As quoted by Jessica Rich, Director of the FTC's Bureau of Consumer Protection, "[Consumers] should be able to depend on dealers to provide truthful information, and they can depend on the FTC to enforce consumer protection laws on the lot." It must be noted that the FTC stated it issues administrative complaints when it has "reason to believe" a law has been violated and it is proceeding in the public interest.

A consent judgment with the FTC carries the weight of law and each violation could be subject to a civil penalty up to \$16,000.

IRS Form 8300 - \$10,000 Recording Fee

Recently, a dealer asked, "When does a dealership have to notify a customer that it is complying with IRS Form 8300, at the time of sale or some other time?" The answer to the question is found in the law itself. Obviously, the timing can be fraught with numerous problems based upon the structure of a deal. If the dealership informs the customer that a Form 8300 will be filed with the IRS it may lead to very uncomfortable questions from the customer as to how to "structure" the deal to avoid the filing of the Form. This type of conversation with a customer is absolutely forbidden and your sales staff and F&I managers have to be trained to avoid any type of discussion that would appear to be helping a customer structure a deal to avoid the law. Remember from past *You Auto Knows* that the dealership could become complicit in a money laundering scheme.

The other side of the coin is when the customer receives notification that the Form has been filed, they could become upset causing a customer relations problem. However, compliance with the law is paramount.

The law states that the dealership must notify the IRS and its customer that it has filed a Form 8300, in writing, by January 31 of the subsequent calendar year. Another question is, instead of sending a separate letter to the customer, can a dealership utilize its Buyer's Order as the notification requirement? Form 8300 states that there is nothing mandating specific language for

the customer statement; however, there are specific requirements. The notification must contain all of the required information. Further, the notification/filing may only be furnished during January of the following year, not at the time of the reported transaction; it must be in a single statement aggregating the total value of all prior year's related transactions. Therefore, individual invoices will not rise to the level of proper notification. The Form must state the name and address of the person making the return, the aggregate amount of the reportable cash received during the calendar year and all related cash transactions and a legend stating the information contained in the Form is being reported to the IRS.

In fact, a copy of the Form 8300 can be provided to the customer as the written notification. If there are multiple transactions, an aggregated Form must be provided. I am sure your dealership has policies and procedures in place regarding the Form 8300 reporting requirements; however, now is a good time to review your procedures to make sure they are in compliance.



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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.