YOU AUTO KNOW©

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Money Laundering

Scenario:

Mr. Jones purchases a vehicle from your store and, as a down payment, provides the dealership with $11,000 in cash, traveler's checks and money orders. Further, Mr. Jones does not provide all the funds in one day, but provides $4,000 on the day the deal is written, and $7,000 on the day the vehicle is picked up. The not so bright sales person believes that since the funds provided did not total over $10,000 on the first day the money was deposited, or at the time of delivery, he did not have to fill out IRS Form 8300.

Approximately six months later, you read in the local newspaper that Mr. Jones has been indicted in a money laundering scheme and, sure enough, the authorities are knocking on the dealership's door, inquiring about Mr. Jones' transaction. Needless to say, your documents are subpoenaed and the dealership is now a defendant in a criminal prosecution.

After all these years, it still does not cease to amaze me that this author continues to receive calls regarding $10,000 IRS Form 8300 compliance. Although dealerships should have policies and procedures in place regarding money laundering, you should review the effectiveness of the policies and procedures to make sure your sales team, managers and office personnel are following them.

First and foremost, the dealership has to have a cash reporting system in place in order to avoid money laundering. As you are aware, the penalty for an intentional disregard of the reporting under IRS Form 8300 is in excess of $25,000 per violation. For a negligent violation, it is a much lesser penalty; however, due to the many sources of information available to dealerships regarding their obligation to properly file a Form 8300, it is more likely the IRS will deem the violation as an intentional violation.

However, the monetary penalty itself is not the worst part of the equation. As stated in this scenario, the dealership could ultimately find itself involved in a criminal prosecution as a participant in a money laundering scheme. A conviction under the Federal Money Laundering Laws could entail imprisonment and ultimately, the loss of your dealership.

Again, you must impress upon your sales people that the $10,000 limit is derived not from a single payment, but a series of payments involving one transaction, or it could be a series of transactions, if the customer is buying multiple vehicles. Further, there should be involvement in multiple layers at the dealership, beginning on the sales floor, finance office, sales manager and the general office. The general office should not be solely responsible since they are not on the sales floor and they do not see how the transaction has occurred.

For example, who actually provided the money? Was it the buyer or another individual? Who has itemized the source of funds and the type of funds required under the form?

The IRS Form 8300 needs to be fully and completely filled out. For example, cash receipts need to accurately identify the transaction, the amount of funds received and the source of funds. Your sales people must be alert to any danger signals that indicate that someone is attempting to launder money. For example, the purchaser is attempting to hide the identity of the true buyer or attempting to conceal the source of funds. This could certainly occur in a straw man transaction where the identity of the individual purchasing the vehicle has been misrepresented; or the fact that the potential buyer is trying to persuade your sales person and managers to hide the true identity of the individual purchasing the vehicle.

It is not sufficient to tell the IRS that you thought the transaction looked suspicious. This, in itself, could raise red flags indicating the dealership knew, or should have known, that a money laundering scheme was taking place and should have stopped the transaction immediately. By that time, it will be too late.

Policies and procedures obviously should be in writing and there should be a training program for sales people, F&I managers, managers and office personnel. The dealership should have one person who oversees the implementation of the policies and procedures and continues the training, and the employees should be made aware of the elements of a money laundering scheme.

To paraphrase an old adage - "If it looks like a duck, quacks like a duck, walks like a duck - it probably is a duck" - and therefore, the dealership should not complete a transaction where it knows, or should have known or is suspicious that a money laundering scheme is taking place.

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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.

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.