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A Game of Chance

By Hao Nguyen, Esq.

Drawings. Spin-to-win. Scratchers. These games are called "sweepstakes" under state and federal law and every once in a while, an advertisement regarding a sweepstakes makes its way into our advertising review service. Dealers are repeatedly approached by either promotional companies or the dealer's own staff pitching new campaigns that involve an opportunity for a lucky consumer to win a brand new car, a state-of-the-art BBQ set, an all-expense paid Hawaii vacation or some other grand prize. Sure, these forms of marketing and advertising are a fun way to get people in the door, but from a legal perspective, they're a potential minefield. There are numerous laws that must be followed to properly advertise and operate a sweepstakes. Here are some things to consider the next time you decide to roll out a sweepstakes of your own .

What is a sweepstakes?

A sweepstakes is a game of chance for which no consideration is required to enter. [[39 USC § 3001\(k\)\(1\)\(D\)](#)].

How does a sweepstakes differ from a lottery?

A lottery requires payment of "any valuable consideration" for the chance of winning. [[Penal Code § 319](#)] Lotteries are prohibited in California and any person who sets one up may be found guilty of a misdemeanor. [[Penal Code § 320](#)]. Therefore, under this section, it is illegal for a dealership to have a promotion that requires a customer to purchase a vehicle (or anything else of value for that matter) in order to have an opportunity to win a prize.

You're probably wondering, "What about the local high school team, charity fundraiser, or church organization that holds a raffle?" [Penal Code § 320.5](#) grants an exemption for certain eligible organizations that hold raffles for the purpose of directly or indirectly supporting beneficial or charitable purposes. The requirements for this exemption are strict, so dealers should nevertheless be cautious about being involved in such raffles because the potential penalties are severe. While it would be permissible to donate or sell a prize for a charitable raffle, we advise against promoting or selling raffle tickets or displaying raffle prizes on dealership property. .

What disclosures are required for a sweepstakes promotion?

Sweepstakes solicitation materials must disclose the following information about the sweepstakes:

- The phrase "**NO PURCHASE IS NECESSARY TO ENTER THE SWEEPSTAKES.**";

[Note: This language must be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting typeface not smaller than the largest typeface used in the text of the official rules.]

- A purchase will not improve an individual's chances of winning;
- Date the winner will be selected;
- The quantity, estimated retail value, and nature of each prize;
- The estimated odds of winning the prize (or each prize offered) or, if that number cannot be determined, a statement that "Odds of winning depend on number of entries received":

- The schedule of any payments made over time;
- The name of the sponsor/mailer and the principal place of business at which the sponsor/mailer may be contacted; and
- All terms and conditions of the sweepstakes promotion, including the rules and entry procedures for the sweepstakes.

[[39 USC § 3001\(k\)\(3\)\(A\)\(ii\)](#); [Bus. & Prof. Code § 17539.15](#)]

[Note: If the sweepstakes is mailed to the consumer, the promoter must clearly and conspicuously provide an address or toll-free telephone number of a notification system to opt-out of future mailings. [39 USC § 3017\(c\)](#)].

Below are additional items that are generally included in a dealer's sweepstakes rules and entry procedures:

- The time-period to enter the sweepstakes;
- How to enter the sweepstakes;
- Minimum age to participate;
- Geographic limitations based on residency;
- Whether a driver's license is required;
- Whether employees of the sponsor or dealer are eligible to enter;
- Whether multiple entries are allowed;
- Whether the winner will be responsible for taxes associated with the prize (plus license fees, registration/transfer/titling fees if the prize is a vehicle); and
- The method to obtain a list of winners.

What statements cannot be made in sweepstakes solicitation materials?

The solicitation materials cannot make or infer any of the following representations if the representation is not true:

- That a person is a winner or has already won a prize;
- That a person has been specially selected;
- That a person is receiving special treatment or personal attention;
- That a person is receiving a second or final notice of the opportunity to receive a prize; or
- That a notice regarding the sweepstakes is urgent.

[[Bus. & Prof. Code § 17539.15](#)]

Drafting the terms and conditions of a sweepstakes promotion, including the rules and entry procedures, can be complicated. Be sure to consult with knowledgeable counsel before embarking on a sweepstakes campaign. If you are working with a third-party "mail house," confirm that they have reviewed the solicitation material with reputable counsel and have received a green light (in writing) for use in California.

Hotline subscribers may call the Hotline with general questions regarding sweepstakes promotions. Please understand, however, that Auto Advisory Services has a long-standing policy against reviewing third party promotional material. We strongly believe that the promotional companies themselves should bear most of the burden associated with ensuring legal compliance, not the dealer.

What's Hot on the Hotline? Sales Tax Exemptions.

By Lisa Singer, Esq.

Although this is not the most riveting topic, our compliance Hotline receives a lot of calls regarding sales tax. Before discussing exemptions, here's a basic question we receive from time to time:

Where can I find the current sales tax rates for California cities and counties?

The California Department of Tax and Fee Administration (CDTFA) publishes this information on its website at <http://www.cdtfa.ca.gov/taxes-and-fees/rates.aspx>. CDTFA also allows you to [find a sales and use tax rate](#) by entering an address.

[Note: Last summer, the legislature voted to transfer most responsibilities of the state Board of Equalization (BOE) to CDTFA. Over the past ten months, some of the forms and publications previously provided by BOE have become available through CDTFA (and are posted on its website), while other items have not yet been transferred. If a form is not yet available on CDTFA's website, the website will provide a link to BOE's website. Also, CDTFA's website contains links to all BOE Sales and Use Tax Regulations. The migration of information from BOE to CDTFA appears to be a slow, ongoing process. As CDTFA continues to upload material to its website, some of the links below to BOE's website may in the future refer you to CDTFA's website.]

Now, let's move on to exemptions. Listed below are the types of sales tax exemptions discussed most frequently on the Hotline:

- **Sale of a new vehicle to another dealer with the same franchise.** The selling dealer must submit a Notice of Transfer and Release of Liability, [Reg 138](#), but is not required to report the transaction on a Wholesale Report of Sale. With the exception of certain special vehicle transactions and vehicle types, a dealer that does not carry the franchise for the new vehicle being purchased must pay sales tax.

[References: [Vehicle Code § 11713.1\(f\)](#); Vehicle Industry Registration Procedures [9.025](#); [BOE Publication 34](#); [CDTFA Publication 103](#); "What's Hot on the Hotline: New Vehicles Purchased By Non-Franchised Dealers" published in the April/May 2015 AAS *Transmission* newsletter]

- **Sale of a new vehicle to a converter (or "upfitter") that will substantially alter or modify the vehicle prior to sale.** Generally, sales tax is due when a dealer sells a new vehicle to a non-franchised dealer. But there is an exception when the buyer is a licensed converter. The Vehicle Code defines a "converter" as a company that, prior to the retail sale of a new vehicle, "assembles, installs, or affixes a body, cab, or special equipment to the vehicle chassis" or "substantially adds to, subtracts from, or modifies the vehicle." The selling dealer must submit an Application for Registration of New Vehicle ([Reg 397](#)), along with a bill of sale and Statement of Facts ([Reg 256](#)), explaining that the vehicle was new when sold to the converter.

[References: [Vehicle Code § 11713.1\(f\)](#); [Vehicle Code § 267](#); Vehicle Industry Registration Procedures Manual [2.100](#), [9.025](#); [CDTFA Publication 103](#)]

- **Sale of a used vehicle to a dealer for resale.** Sales tax does not apply when the vehicle is purchased by a licensed dealer for resale in the regular course of business, and the seller has used a Wholesale Report of Sale ([Reg 396](#)) to report the transaction.

[References: [CDTFA Publication 103](#); Vehicle Industry Registration Procedures [9.000](#)]

- **Sale of a vehicle to a leasing or rental company.** This type of transaction is exempt, provided the leasing or rental company has a California seller's permit and will be collecting and remitting sales tax based on the vehicle's associated rental receipts. For a detailed discussion regarding sales to leasing or rental companies, see "*Hot from the Hotline: Does Sales Tax Apply to Sales to Rental Car Companies?*" published in July/August 2017 AAS *Transmission* and "*Sales to Leasing Companies*" published in November 2006 AAS *Transmission*.

[Additional reference: Sales and Use Tax [Regulation 1660](#)]

- **Sale of a vehicle for use outside of California and delivered outside of California.** The following requirements must be met:
 - Delivery outside of the state means that the customer must actually take possession outside of California. You'll need evidence that the vehicle was delivered out of state, either by a dealership employee or by a common carrier. If delivered by a dealership employee, the employee and the customer should sign before a notary form [CDTFA-448](#), Statement of Delivery Outside California, at the place of delivery. If delivered by a common carrier, the bill of lading, evidencing both the vehicle's pickup at the dealership and its delivery at an out-of-state location, will suffice.
 - If the customer is a California resident, who is taking delivery out of state, have the customer sign a form [CDTFA-447](#), Statement Pursuant to Section 6247 of the California Sales and Use Tax Law. When this form is properly completed by the customer and accepted in good faith by the dealer, it relieves the dealer of liability for failure to collect use tax. This document informs the customer that if the vehicle enters California for any reason other than qualifying warranty or service repairs during the first 12 months after delivery, it shall be presumed that the customer purchased the vehicle for use in California and the customer will owe use tax directly to the CDTFA unless the customer can produce evidence to prove otherwise.

[References: Sales and Use Tax [Regulation 1620](#) and [Sales and Use Tax Law 6247](#); "*Out-of-State Deliveries: 90 Day Rule Goes Back to 12 Month Rule*" published in the October 2008 AAS *Transmission* newsletter]

- **Sale of a vehicle exported to a foreign destination.** Sales tax does not apply when a vehicle is sold to a customer and exported. The dealer must ship or deliver the vehicle to the foreign country. In order for the exemption to apply, the vehicle must be "irrevocably committed" to the export process at the time of sale and must actually be delivered to the foreign country *prior* to any use of the vehicle. There is an irrevocable commitment to export a vehicle when the dealer delivers the vehicle:

- (1) directly to the foreign county (e.g., dealership employee drives the vehicle to Mexico or Canada);
- (2) to a carrier, forwarding agent, export packer, customs broker or other company engaged in the business of exporting vehicles, or

exporting vehicle, or
(3) to a ship or airplane or "other conveyance" furnished by the buyer for the purpose of carrying the vehicle in a continuous journey to the foreign country.

[References: Sales and Use Tax [Regulation 1620\(a\)\(3\)\(C\)\(2\)](#); [CDTFA Publication 101](#)]

- **Sale of a vehicle to an American Indian and delivered in Indian Country.** In order to be exempt, there must be evidence of all of the following requirements:
 - (1) The vehicle must be sold to an American Indian;
 - (2) The purchaser must reside on a reservation;
 - (3) The vehicle must be delivered to the reservation; and
 - (4) Ownership must be transferred at the reservation. To satisfy this requirement, the contract should specify that delivery will take place on the reservation (check with your lender/leasing company to see whether such a statement may be printed in the blank box).

If the vehicle is delivered by a dealership employee, at the place of delivery, the employee and the customer should sign before a notary form [CDTFA 146-RES](#), Exemption Certificate and Statement of Delivery in Indian Country. If delivered by a common carrier, the bill of lading, evidencing pickup at the dealership and delivery at the reservation, will suffice.

[Reference: [CDTFA Publication 146](#)]

- **Sale of a vehicle to a foreign diplomat/consul or consular mission.** Foreign consular officers, employees and members of their families are exempt from sales tax if the purchaser provides a Tax Exemption Card from the U.S. State Department, Office of Foreign Missions (OFM) and the OFM **directly** furnishes an eligibility letter to the dealer. Dealers can obtain an eligibility letter by calling or by emailing the nearest OFM. Below is the contact information for California.

Los Angeles: (310) 235-6292; OFMLACustomerService@state.gov
San Francisco: (415) 744-2910; OFMSFCustomerService@state.gov

For information regarding registration of vehicles sold to a foreign consul or consular mission, see Vehicle Industry Registration Procedures Manual [6.020](#) (new vehicles) and [8.060](#) (used vehicles); and "Sales Tax Exemption for Foreign Diplomats" published in the February 2004 AAS *You "Auto" Know* newsletter.

[Additional references: Sales and Use Tax [Regulation 1619](#); [BOE Publication 34](#); [Website of OFM](#)]

- **Sale of a vehicle to the US government.** Sales to the US government or to a corporation owned by the US government are generally not taxable. This exemption includes sales to the **American National Red Cross**. But, sales to state, county and city government agencies (including universities, libraries, and school districts) are taxable.

Although a vehicle sale to the US military is exempt, a sale to an individual member of the armed services does not qualify for the exemption.

[References: Sales and Use Tax [Regulation 1614](#); [CDTFA 102](#); [BOE Publication 34](#)]

There is **no sales tax exemption for sales to non-profits and religious organizations**. Although many of these organizations are exempt from state and federal *income tax*, they must still pay sales tax on their purchases. Buyers affiliated with non-profit and religious organizations often present documentation they believe supports a claim they are exempt from sales tax. However, a review of the documentation will show it relates only to income tax, not sales tax.

This article does not cover every sales tax exemption, but it covers the most frequent ones a dealer will encounter. Hotline subscribers with questions may contact us at (800) 785-2880 or questions@autoadvisory.com.

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