

## California Dealership Lawsuit Report

Auto Advisory Services is pleased to announce our latest monthly feature: the California Dealership Lawsuit Report. This report tracks California industry lawsuit filings to find litigation trends, which we will use to prioritize our auditing and training procedures. Going forward, we will be tracking filings on a daily basis to keep our clients informed of trends in litigation. Due to technological limitations of the Marin, Sacramento, San Diego, and Santa Barbara Superior Courts, some filed lawsuits may not be accounted for in our report.

According to our records, 68 consumer lawsuits involving retail vehicle sales were filed against dealers in California from April 1st through time of printing.

Of the 68 lawsuits, the top five most common issues were:

1. Breach of contract/warranty (generally involving lemon law claims);
2. General fraud claims;
3. Misrepresentation of a vehicle's use or damage history;
4. Failure to properly disclose deferred downpayments (hold checks); and
5. Failure to comply with foreign language transaction requirements.

*Please feel free to call the Auto Advisory Services Hotline at (800) 785-2880 with questions on compliance with these or any other legal requirements.*

## Form 8300 Cash Reporting: No Social Security Number? No Follow Up? No Safe Harbor For You!

One of the more notorious miscellaneous paperwork requirements affecting dealers stems from the Cash Reporting Rule, which was created to detect and prevent money laundering. The Cash Reporting Rule requires the completion and filing of IRS/FinCen Form 8300 with the IRS (and under California law, the Franchise Tax Board) when collecting more than \$10,000 in cash. The rule is also triggered when collecting a combination of cash and cash equivalents each with a face value of less than \$10,000, but exceeding that amount when combined (e.g., a \$9,000 cashier's check combined with \$1,500 cash to purchase a vehicle). Furthermore, the requirement applies when the dealer has reason to know that a customer is attempting to avoid the Cash Reporting Rule, in which case the dealer must check the "Suspicious Transaction" box on the form, but is prohibited from informing the customer that it has done so.

This article is focused on an issue that has arisen during a recent string of IRS dealer audits, but is not well-covered in the otherwise very good IRS FAQ on the subject (available on the IRS website [www.irs.gov](http://www.irs.gov)): what to do if the customer fails to provide his or her Social Security Number (SSN) or other Taxpayer Identification Number (TIN), and the dealership cannot otherwise collect such information.

[Reference: Internal Revenue Code § 60501; Treas. Reg. § 1.60501-1; 31 U.S.C. § 5331.]

Note: the scope of this discussion is narrow. For more information on cash reporting, please see *Cash Reporting, Here We Go Again*, TRANSMISSION October 2003; *IRS Publishes New Cash Reporting Q&As for Auto Dealers*, TRANSMISSION, April 2006; *8300 Cash Reporting and Consolidated Business Offices*, TRANSMISSION, October 2006; and IRS Publication 1544; or contact your CPA or tax attorney.

### Taxpayer Identification Number (e.g., Social Security Number)

Proper completion of Form 8300 requires the purchaser's TIN. For most customers, this will be their SSN. Some non-resident aliens and resident aliens who are ineligible for a SSN will acquire an individual taxpayer identification number (ITIN). Corporations, partnerships, trusts and estates will have an employer identification number (EIN). Form 8300 can be completed with any of these (SSN, ITIN or EIN).

*(Continued on page 3)*

## Form 8300 Cash Reporting (Cont.)

(Continued from page 2)

When a customer fails to provide a TIN, or a TIN is otherwise unavailable (e.g., when selling to a foreign national), the dealer cannot properly complete the form. And failure to properly complete the form can get very expensive, since penalties are assessed on a per-transaction basis. For businesses with gross annual receipts exceeding \$5 million (virtually all new car dealerships) the penalties can accrue to as much as \$1,500,000 per year. Individuals who willfully file a false Form 8300 may be fined up to \$250,000 and face up to three years of imprisonment.

[Reference: 26 U.S.C. § 6722.]

Thankfully, the law creates a “reasonable cause” safe harbor that may apply in circumstances where a customer is unable or unwilling to provide a TIN, but this protection requires the filer to provide additional documentation and react in a “responsible manner.” The safe harbor may also be granted if significant mitigating factors apply, but this requires such a determination by the law enforcement agency *after* they found a violation—not something a dealer wants to count on.

[Reference: 26 C.F.R. § 301.6724-1]

### Establishing Reasonable Cause

The penalty for failing to file a properly completed Form 8300 will be waived if the dealer can show that the failure was due to reasonable cause and not willful neglect. Reasonable cause includes situations where the failure is caused by an impediment that arose beyond the dealer’s control.

[Reference: 26 C.F.R. § 301.6724-1(a)(1)-(2).]

An event beyond the dealership’s control generally includes the actions of the payee/customer who is required to provide the information necessary (such as the TIN) to complete Form 8300. In order to establish the safe harbor, the dealer must show that the failure to file a complete Form 8300 was either because the customer failed to provide the necessary information or because the customer provided incorrect information (and the dealer did not know it was incorrect). To prove this, the IRS requires that the dealer be able to provide documentary evidence, upon request, showing that the incomplete 8300 is the customer’s fault.

[Reference: 26 C.F.R. § 301.6724-1(c)(1)-(6).]

### Reaction in a “Responsible Manner”

Even if the dealer can demonstrate that the failure to provide a TIN with the filing was outside of its control, it must also

react in a reasonable manner for safe harbor protection. For a missing TIN, the IRS regulations deem a reaction as reasonable if the dealer requests that the customer provide a correct TIN at least three times:

1. An initial request at the time of the transaction;
2. A “first annual” request before December 31 of that year if the transaction occurred before December 1 or, if the transaction occurred in the month of December, before January 31 of the following year; and
3. A “second annual” request on or before December 31 of the year after the transaction.

A dealership that fails to make any of the requests can minimize penalties by filing “make-up solicitations”—two additional consecutive annual solicitations.

If notified by the IRS (either as part of a penalty notice or some other form of notification) that a TIN included on a Form 8300 was *incorrect*, safe harbor protection will be satisfied if the dealer files two annual requests (the initial request will have already been made), meeting the deadlines described above.

### Initial Request

The initial request can be made verbally or in writing. The dealership must maintain records showing the request was made. Importantly, the dealership must also accompany the incomplete Form 8300 with a statement explaining why the TIN is not included. Attaching a copy of the first page of the AAS “Cash Reporting” form (found at the end of this newsletter) should do the trick.

**Note:** Even if the TIN cannot be obtained, be sure to file the Form 8300 within 15 days of receiving the cash or cash equivalent—failure to do so is not excused just because you were waiting for the customer to respond to your request to provide the TIN.

### Annual Requests

Federal law allows for annual TIN requests to be made either by mail or by phone, as described below. AAS recommends that any such requests be made in writing via first class mail, with the dealer creating and retaining copies of the content and proof of mailing. These copies can be used to prove annual request attempts. The dealer can provide further evi-

(Continued on page 4)

## Form 8300 Cash Reporting (Cont.)

(Continued from page 3)

dence by completing the checklists in Sections B and C of AAS "Cash Reporting" form (found at the end of this newsletter). The annual mailing must include the following :

1. A letter informing the payee that he or she must provide his or her TIN and is subject to a \$50 penalty imposed by the Internal Revenue Service under section 6723 if failing to furnish a correct TIN (see AAS "Request for Taxpayer Identification Number" form at the end of this newsletter for a sample letter);
2. A Form W-9, on which the payee may provide the TIN; and
3. A return envelope for the payee to provide the TIN which may be, but is not required to be, postage prepaid.

If the requests are made through the mail and the dealership is informed that the customer's address has "stop-mail," or "hold-mail" instructions in place or that the address is undeliverable, no further annual solicitation is required. However, if this occurs, the dealership should verify that the mailing address used matches the address provided by the customer.

[Reference: 26 C.F.R. § 301.6724-1(e)]

**Note:** If, at any point, the dealer collects an accurate TIN, the dealer should file a completed follow-up version of the Form 8300, with the "Amends Prior Report" box checked. Do not send a copy of the original report.

### TIN-Collection Exception

In the event that the nonresident alien customer is unable to provide a TIN, the instructions to Form 8300 allow for an exception to the TIN-collection requirement if all of the following criteria are met:

1. The individual or foreign organization does not have income effectively connected with the conduct of a trade or business in the United States, or an office or place of business or fiscal or paying agent in the United States at any time during the year;
2. The individual or organization does not furnish a federal tax return or withholding certificate;

3. The individual or organization does not have to furnish a TIN on any return statement or other documents as required by income tax regulations; and
4. The individual has not chosen to file a joint federal income tax return with a spouse who is a U.S. citizen or resident.

Unfortunately, the information required to verify these elements is very difficult for a dealership to collect. Accordingly, AAS recommends documenting the request for information and the customer's representation that each of the required elements is satisfied. This can be done on the first page of the AAS "Cash Reporting" form (found on pages 9 and 10).

### Conclusion

Although transactions that require the use of Form 8300 may be few and far between, the failure to abide by these obligations invites scrutiny from a scary collection of government agencies: the IRS, the Treasury's Financial Crimes Enforcement Network, the Department of Justice, the Department of Homeland Security, the FBI, the California Franchise Tax Board and state and local law enforcement are some of the friendly government agencies that may have jurisdiction over dealership activities if money laundering occurs involving a vehicle sold by you. And dealer transactions are seen as targets for money launderers given their high value. A quick internet search of "money laundering" and "car dealership" reveals both how serious and surprisingly common such allegations are.

In the event that a dealer does not receive a TIN, or receives an incorrect TIN, proper documentation of eligibility for the "reasonable cause" safe harbor will be incredibly important in minimizing potential penalties. With this in mind, AAS has created a two-page form entitled "Cash Reporting" and a separate "Request for Taxpayer Identification Number" sample letter for our clients to use with such transactions. Both the form and the sample letter can be found on pages 9 through 11. AAS Hotline clients can request a high resolution PDF or editable version of these forms by emailing us at [questions@autoadvisory.com](mailto:questions@autoadvisory.com).

**CASH REPORTING**

(For Internal Use When Customer Cannot or Refuses to Provide a Social Security Number)

Customer's Name(s)					
Address (Street)		City	State	Zip	Phone Number
Customer's Email Address					
Year	Make	Model	VIN		

The customer is tendering more than \$10,000 in cash for the purchase of the above referenced vehicle. For the purposes of this form, "cash" includes U.S. and foreign currency together with monetary instruments such as cashier's checks, traveler's checks, money orders and bank drafts. "Cash" does not include an individual monetary instrument with a face value of more than \$10,000. "Cash" also does not include a monetary instrument that is the result of the proceeds of a loan, such as a credit union cashier's check containing a restrictive endorsement requiring the credit union to be named legal owner.

In order to comply with federal law, the dealership is required to attempt to obtain this customer's tax identification number (TIN).

☐ Customer is **unable to** provide a TIN

**EXCEPTION FOR CERTAIN NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN ORGANIZATION**

IRS/FinCEN Form 8300 provides an exception to the TIN requirement for certain nonresident alien individuals or foreign organizations if **ALL** of the following are true:

1. ☐ Customer represents that he/she is a nonresident alien individual or foreign organization that does not have income effectively connected with the conduct of trade or business in the United States or an office or place of business or fiscal or paying agent in the United States at any time during the year; and
2. ☐ Customer represents that he/she does not file a federal tax return or withholding certificate; and
3. ☐ Customer represents that he/she does not have to furnish a TIN on any return, statement or other documents as required by income tax regulations; and
4. ☐ Customer represents that he/she has not filed a joint federal income tax return with a spouse who is a U.S. citizen or resident.

☐ Customer **refuses to** provide a TIN and the above exception does not apply

**A. INITIAL REQUEST FOR TAXPAYER IDENTIFICATION NUMBER  
(All Steps Must be Completed)**

1. ☐ Customer refused to provide a TIN upon verbal request.
2. ☐ Dealership has attached a **copy** of this form to Form 8300 and filed both forms with the IRS.
3. ☐ Dealership has calendared a reminder for the first annual follow-up solicitation (see Section B on page 2).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dealer Representative's Name



\_\_\_\_\_  
Dealer Representative's Signature

**B. FIRST ANNUAL FOLLOW-UP SOLICITATION FOR TAXPAYER IDENTIFICATION NUMBER  
(All Steps Must be Completed)**

A "first annual" follow up request must be made before December 31 of this year if the transaction occurred before December 1 or, if the transaction occurred in the month of December, before January 31 of the following year.

1. ☐ The first annual request was made on \_\_\_\_\_.
2. ☐ A letter was sent to customer's address as indicated on page one stating that he or she must provide his or her TIN and that he or she is subject to a \$50 penalty imposed by the Internal Revenue Service under Internal Revenue Code section 6723 if he or she fails to furnish his or her TIN.
3. ☐ The letter included a Form W-9 upon which the customer may provide a TIN.
4. ☐ An addressed return envelope was included for the customer to provide the TIN.

\_\_\_\_\_  
Date\_\_\_\_\_  
Dealer Representative's Name\_\_\_\_\_  
Dealer Representative's Signature**C. SECOND ANNUAL FOLLOW UP SOLICITATION FOR TAXPAYER IDENTIFICATION NUMBER  
(Required Only if Customer Still Has Not Provided TIN)**

A "second annual" follow up request must be made on or before December 31 of the year after the transaction took place.

1. ☐ The second annual request was made on \_\_\_\_\_.
2. ☐ A letter was sent to customer's address as indicated on page one stating that he or she must provide his or her TIN and that he or she is subject to a \$50 penalty imposed by the Internal Revenue Service under Internal Revenue Code section 6723 if he or she fails to furnish his or her TIN.
3. ☐ The letter included a Form W-9 upon which the customer may provide a TIN.
4. ☐ An addressed return envelope was included for the customer to provide the TIN.

\_\_\_\_\_  
Date\_\_\_\_\_  
Dealer Representative's Name\_\_\_\_\_  
Dealer Representative's Signature

**REQUEST FOR TAXPAYER IDENTIFICATION NUMBER**
☐ First Annual Follow Up Request    ☐ Second Annual Follow Up Request

Customer Name(s) ("you")			Today's Date
Address: Street	City	State	Zip
Dealership			Transaction Date
Year	Make	Model	VIN

Dear \_\_\_\_\_:

On the date listed above you tendered more than \$10,000 in cash for the purchase/lease of the above referenced vehicle. In these circumstances the Internal Revenue Code requires merchants to report the transaction to the Internal Revenue Service (IRS) using IRS/FinCen Form 8300. To complete the form, merchants need to know the buyer's taxpayer identification number (TIN). On the date of your purchase, dealership personnel requested your TIN, which is a social security number (SSN) for individuals who are residents of the United States, an individual taxpayer identification number for individuals who are nonresident aliens (ITIN), or an employer identification number (EIN) for corporations, partnerships, trusts and estates. However, on the date of sale, no TIN was provided.

In order to comply with the law, we are again requesting that you provide a TIN. We are required to inform you that if you fail to provide a TIN, you can be subject to a \$50 penalty imposed by the Internal Revenue Service under Internal Revenue Code section 6723. Please complete the enclosed IRS Form W-9 (upon which you can provide your TIN) and return it to us in the enclosed return envelope.

The only exception to this requirement is for nonresident alien individuals or foreign organizations if all of the factors below are true. If the factors below apply to you, please indicate so by initialing **ALL** four boxes, signing this form, and returning it to us via the enclosed return envelope.

(Customer's Initials)

\_\_\_\_\_ You represent that you are a nonresident alien individual or foreign organization that does not have income effectively connected with the conduct of trade or business in the United States or an office or place of business or fiscal or paying agent in the United States at any time during the year; and

\_\_\_\_\_ You represent that you do not file a federal tax return or withholding certificate; and

\_\_\_\_\_ You represent that you do not have to furnish a TIN on any return, statement or other documents as required by income tax regulations; and

\_\_\_\_\_ You represent that you have not filed a joint federal income tax return with a spouse who is a U.S. citizen or resident.

Date

Customer's Name



Customer's Signature

REV (5/14)

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