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Bureau of Automotive Repair Pushes Through New Regulations

By Hao Nguyen, Esq.

Over the past few years, the Bureau of Automotive Repair (BAR) has been trying to add and revise numerous regulations relating to the Automotive Repair Act. Finally, with the help of interested parties and input by members of the public, it is with great excitement that we can say, “We did it!” The Office of Administrative Law (OAL) recently approved BAR’s proposed language and these changes take effect *immediately*.

What Does This Mean?

We have been closely monitoring these developments and you can rest assured that our inspections now include these new regulations. Below, we’ve highlighted only the major changes for the sake of brevity. For the actual text of the new regulations, please click [here](#). With this update, BAR has taken a huge step toward bringing California’s automotive repair industry into the 21st Century. We would like to thank all the interested parties and associations for their herculean effort to get this done, specifically Jack Molodanof and our friends at the California Automotive Business Coalition (CalABC).

What Regulations Were Added?

1. Estimates, work orders, and invoices can now be provided in electronic format. What was traditionally created and sent to the customer in hardcopy can now be sent to the customer through either an email or text message.

2. Authorization can now be received from the customer electronically. The customer can authorize an estimate with an electronic signature, an email, or text message. Remember: If authorization is received in this manner, your repair facility must properly document the authorization on the estimate by recording the date, time, name of the person authorizing the repairs, and the telephone number or email address used.

3. Each part listed on the estimate is considered to be “new” unless it is specifically identified as used, rebuilt or reconditioned. The responsibility used to be on the repair facility to identify the replacement part as new. Now, the parts used during the repair are presumed to be new unless otherwise stated.

4. Advertisements and advertising signs must show the name and address of the repair facility as it is listed on its BAR registration certificate. It used to be that an advertisement needed a phone number that was listed in a phone directory and in the BAR database, but with so many departments in a dealership (each with its own respective phone number) and the proliferation of Voice Over Internet Protocol (VOIP) enabled phones, this requirement was antiquated and not useful.

5. Repair facilities cannot charge the customer fees for electronic communication with the smog check database. In furthering the prohibition of charging the customer for generic items such as shop supplies or miscellaneous parts, BAR extended this prohibition to include fees that may be considered as overhead for operating a smog check station.

6. If a customer declines a repair service or reassembly after a tear down, the repair facility must document this on the invoice. This requirement clears up any misunderstanding that may arise if a record, upon review, shows that a repair service was not performed.

What Regulations Were Clarified?

1. Estimates must be provided to, and authorized by, the customer before any work commences. It used to be that an estimate was only provided for a “diagnosis and repair” service, but this clarification seems to extend the number of situations where an estimate is required. Work that was not traditionally viewed as a “diagnostic or repair,” but rather seen as information gathering now needs an estimate. Some examples of this kind of work are electronic tread depth analysis, pulling a vehicle’s codes with a key fob, or performing a courtesy multi-point inspection. Arguably, these all need to be on the estimate and authorized by the customer.

2. Authorization is required for no-charge and warranty repairs. It has always been our position that customer authorization was required even for these types of repairs, but it is now officially required in the new regulation.

3. Part kits containing several parts may be listed as a single part on the invoice and identified by brand name and corresponding part number (or similar designation). Again, it has been our position that part kits should be identified by brand name and an identifier. This nuance is now specified in the regulation. Note: Although the regulations do not speak to the description of a part kit on the estimate, we recommend the same.

4. Records can be maintained in electronic form. The regulation used to require that hardcopies be maintained for at least three years, but the regulation now allows for electronic storage. It is imperative that all documentation be maintained for the required timeframe. This includes, but is not limited to, all work orders, contracts, and records that supplement the work order or authorizations received. Additionally, all of the documents must have a unique identifier linking all of the records together for a specific transaction.

Questions?

If you have any questions regarding your service department or want more information about the service department compliance program, please contact us at (800) 785-2880 or questions@autoadvisory.com. For information about CalABC and how you can get more involved in the automotive repair industry, please contact them at (916) 447-8175 or info@CalABC.org.

Form 8300 Cash Reporting — Lessons Learned from an IRS Audit

By Lisa Singer, Esq.

One of our dealership clients recently had the unfortunate experience of being audited by the IRS and fined for various violations relating to [IRS Form 8300](#) and the Cash Reporting Rule. The dealer's controller/CPA was kind enough to share some details regarding the audit along with her recommendations for cash reporting compliance.

Brief Overview of Cash Reporting Rule

The purpose of the Cash Reporting Rule is to detect and prevent money laundering. The IRS requires businesses that receive more than \$10,000 in cash, in either a single transaction or in related transactions, to complete and file IRS/FinCEN Form 8300 with the IRS. California businesses must also file a copy of Form 8300 ([Information Return](#)) with the Franchise Tax Board. The rule applies when a business collects cash (actual coins or paper currency) and/or "cash equivalents" exceeding \$10,000 when combined. "Cash equivalents" are monetary instruments that have a face value of \$10,000 or less, including cashier's checks, money orders, traveler's checks and bank drafts. Personal and business checks are not considered cash or cash equivalents for purposes of the cash reporting rule. Monetary instruments for more than \$10,000 don't need to be reported by the dealer because they would be reported by the bank that issued them, if the customer paid over \$10,000 in cash to the bank.

Below are a few examples that require a dealer to file Form 8300:

1. A customer pays \$10,000.01 in green cash.
2. A customer who is buying a car for \$11,000 pays \$5,000 in cash plus a \$6,000 cashier's check.
3. A customer who is financing a car for \$20,000 makes an initial down payment of \$5,000 in cash and makes two deferred down payments with cashier's checks for \$3,000 and \$2,500.

Even when a customer pays less than \$10,000 in cash, businesses are required to report any suspicious transactions on Form 8300 if there is reason to believe the customer is attempting to avoid the cash reporting requirement. However, if you have reason to believe that the transaction is suspicious, you may want to ask yourself whether you should be going through with the transaction in the first place. [References: [26 United States Code § 6050I](#); [31 United States Code § 5331](#); [26 Code of Federal Regulations § 1.6050I-1](#)]

[IRS Form 8300](#) contains three pages of instructions regarding when the form is required, how to complete it and where to file it. Also, the IRS has posted a helpful webpage called [Motor Vehicle Dealership Q&As](#), which was updated in July 2018.

Collect All Required Personal Information Regarding the Customer(s)

Part I of Form 8300 must be filled out completely. If there are two or more customers who provided the cash, you'll need to collect all the required information for each customer.

Part I Identity of Individual From Whom the Cash Was Received						
2 If more than one individual is involved, check here and see instructions <input type="checkbox"/>						
3 Last name			4 First name		5 M.I.	6 Taxpayer identification number
7 Address (number, street, and apt. or suite no.)					8 Date of birth (see instructions) M M D D Y Y Y Y	
9 City		10 State	11 ZIP code	12 Country (if not U.S.)		13 Occupation, profession, or business
14 Identifying document (ID)		a Describe ID			b Issued by	
		c Number				

During our client's IRS audit, the auditor focused on sections 6 (taxpayer identification number), 13 (occupation), and 14 (identification).

Box 6: Taxpayer Identification Number (TIN). For most customers, their social security number is their TIN. Some consumers who are ineligible for a social security number obtain an Individual Taxpayer Identification Number (ITIN) while corporations, partnerships, trusts, and estates will have an Employer Identification Number (EIN). A TIN, ITIN, or EIN must be printed in box 6, or the dealership will need to prepare further documentation regarding why that information was not provided. [For details regarding what steps must be taken if the customer does not provide a TIN, ITIN or EIN see [Form 8300 Cash Reporting: No Social Security Number, No follow up? No Safe Harbor For You!, Transmission May 2014.](#)]

Box 13: Occupation, Profession, or Business. Finance personnel at our client's dealership often failed to collect this information, so the dealership submitted numerous 8300 forms where box 13 was left blank. The dealership was fined for every 8300 form that did not include the required information.

Lesson learned: Always ask customers about their occupation, profession, or business, and print the information in box 13. If the customer is retired, print "retired;" *never leave the box blank under any circumstance.*

Box 14: Identification. According to the instructions on Form 8300, the following forms of identification are acceptable: driver's license, passport, alien registration card, or "other official document." Regarding the last item, a U.S. military ID or state ID would qualify. While a foreign driver's license is acceptable, note that there is no such thing as an International Driver's License. An International Driver's *Permit* is merely a translation of a valid foreign driver's license; the permit alone is not sufficient. A foreign customer must present a valid foreign driver's license, not just a translation of one. Regardless of the form of identification provided, make sure it's current (unexpired).

If one party pays the purchase price on behalf of another party (i.e., the person who will be designated as the registered owner of the vehicle), the same personal information must be collected regarding both parties. Information regarding the person who paid cash must be set forth in Part I of Form 8300 while information about the party "on whose behalf the transaction was conducted" must be entered in Part II of the form.

Although it would be convenient to complete Form 8300 while the customer is present, we advise against doing so in order to avoid discussions with the customer about the cash reporting requirement. It is unlawful for a business to aid a consumer in avoiding the cash reporting laws. Merely mentioning Form 8300 may trigger discussions about changing the method of payment, which could potentially lead to charges that the dealership engaged in illegal structuring.

Instead, dealership personnel should diligently collect all the required information before the customer takes delivery of the vehicle. Generally, you have one shot to get the information you need to complete all required fields of Form 8300. Customers who pay cash are frequently unwilling to provide further personal information after they leave the dealership.

Document the Required Information to Describe the Payment Received

When receiving paper cash, the dealership must report the receipt of bills with a face value of \$100 or more. In order to complete box 32a, your finance department will need to make a record of the denomination of the bills received.

Part III Description of Transaction and Method of Payment			
28 Date cash received M M D D Y Y Y Y : : : : : : : :		29 Total cash received \$ _____ .00	30 If cash was received in more than one payment, check here ▶ <input type="checkbox"/>
			31 Total price if different from item 29 \$ _____ .00
32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):			
a U.S. currency	\$ _____ .00	(Amount in \$100 bills or higher \$ _____ .00)	
b Foreign currency	\$ _____ .00	(Country ▶ _____)	
c Cashier's check(s)	\$ _____ .00	} Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶ _____ _____ _____	
d Money order(s)	\$ _____ .00		
e Bank draft(s)	\$ _____ .00		
f Traveler's check(s)	\$ _____ .00		
33 Type of transaction		34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶ _____ _____ _____	
a <input type="checkbox"/> Personal property purchased	f <input type="checkbox"/> Debt obligations paid		
b <input type="checkbox"/> Real property purchased	g <input type="checkbox"/> Exchange of cash		
c <input type="checkbox"/> Personal services provided	h <input type="checkbox"/> Escrow or trust funds		
d <input type="checkbox"/> Business services provided	i <input type="checkbox"/> Bail received by court clerks		
e <input type="checkbox"/> Intangible property purchased	j <input type="checkbox"/> Other (specify in item 34) ▶		

The information required to complete section 32a must be captured at the time the money is received, as it is unlikely the dealership can later determine this information from a review of ordinary business records. One way to capture this information is to provide it on the receipt by showing a breakdown of the bills received.

For example, if a customer pays \$12,120, the receipt might show the following breakdown: \$100 x 110 = \$11,000; \$50 x 20 = \$1,000; \$20 x 6 = 120. Using this example, section 32a would show \$11,000 was received in \$100 bills.

Do Not File Form 8300 Unnecessarily — The Cash Reporting Rule Applies to Cash Payments of MORE THAN \$10,000

If the dealership receives exactly \$10,000 in cash, it is not necessary to file Form 8300. Our client mistakenly filed Form 8300 for deals in which the dealership received precisely \$10,000. Some of the forms were missing some of the information described above. Even though the forms were not necessary in the first place, the dealership was nevertheless fined for each incomplete 8300 form submitted to the IRS (e.g., where the customer's occupation was not stated).

Lesson learned: Except when reporting a suspicious transaction, do not file the report unless the dealership receives at least \$10,000.01 in cash.

File on Time

Form 8300 must be filed with the IRS within 15 days of receiving cash exceeding \$10,000. If the 15th day falls on a weekend or holiday, file the form on the next business day.

Send Statement to Customer on Time

Each person named on a Form 8300 Report must receive a statement by no later than January 31 of the next calendar year. The statement must provide the name, address, and phone number for a point of contact at the dealership, the amount of cash received, and the fact that the information was furnished to the IRS. Here is an example of a statement that could be used:

Dear [Customer]:

Pursuant to federal law, we are notifying you that we filed IRS/FinCEN Form 8300 with the Internal Revenue Service as a result of the cash or cash equivalent payment(s) that you provided to us.

Our records show that as part of your transaction(s) with us, you have paid a total of \$ _____ in cash or cash equivalent.

If you have any questions concerning cash reporting laws, please contact the IRS or visit www.irs.gov

Sincerely,

The statement does not need to be submitted to the IRS. Reportedly, when the IRS files an action for the failure to file Form 8300, they generally also tack on a claim for failing to provide a written statement (also referred to as a non-notification claim).

Track and Report Multiple Related Payments

The Cash Reporting Rule requires dealers to report the receipt of over \$10,000 cash, whether it is provided by a customer all at once or in related transactions. To accomplish this, the dealership must set up a system of tracking related payments. For example, suppose a customer enters into a retail installment sale contract for a vehicle that costs \$30,000. The agreement provides for a total down payment of \$12,000, with the balance being financed. The payment schedule reflects an initial cash down payment of \$1,000 and two deferred payments of \$5,500 each. Now, suppose the customer writes a check for the initial \$1,000 down payment, one week later he pays \$5,500 in cash and the following week he pays another \$5,500 in cash. The customer has paid a total of \$11,000 in cash, made in two related payments.

During an IRS audit, the auditor will likely review records contained in your Dealer Management System (DMS), bank statements, deal files, and various internal accounting records. The auditor will search for unreported cash transactions evidencing violation of the Cash Reporting Rule.

Prior to the audit, our client did not track related cash payments in excess of \$10,000. Now, on a daily basis, the dealership tracks cash payments and determines whether the payments are related. If so, and the cash amounts exceed \$10,000, the dealership files Form 8300.

Lesson learned: Related cash payments exceeding \$10,000 must be tracked in order to be reported. If a Form 8300 is required, but not filed for any given deal, a dealership subject to an IRS audit will receive two fines — one for failing to file the report and another for failing to notify the customer of the report that should have been filed.

Appoint a Cash Reporting Coordinator

The best way to comply with cash reporting requirements is to appoint a dealership employee to be the Cash Reporting Coordinator (CRC). All finance managers should communicate with the CRC whenever they receive large sums of cash above an amount designated by the CRC. The CRC should be responsible for:

- Assuring all Form 8300 Reports are properly completed.
- Filing all Form 8300 Reports on time.
- Mailing all customer statements regarding cash reporting on time.
- Making sure all salespeople, finance managers and sales managers receive training regarding cash reporting. (Finance managers must be trained to document all information that must subsequently be reported to the IRS.)
- Creating a system to track multiple related payments and monitoring for related cash payments that exceed \$10,000.

Questions?

The cash reporting rule is a complex area of law with many nuances. Hotline subscribers can contact us at (800) 785-2880 or at questions@autoadvisory.com.

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