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Are you ready for the new overtime rules?

Vehicle recalls

Customers in, customers made permanent

In the crosshairs: Popular estate planning practice in jeopardy

The future of autonomous vehicles

Automotive Dealership Group

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Are you ready for the new overtime rules?

Since the 1930s, U.S. businesses have relied on rules detailed in the Fair Labor Standards Act (FLSA) to determine which employees are eligible to receive overtime pay. These rules are scheduled to change on December 1, 2016, for the first time in over a decade.

The result of the change may be a dramatic increase in the number of salaried dealership employees who could become eligible to receive overtime. There's not much time before the change takes place, so start planning now for how you can lessen the impact of the rule change on your dealership.

WHAT THE LAW REQUIRES

The FLSA requires businesses to pay nonexempt employees a minimum of time-and-a-half for each hour they work beyond 40 hours per week. The exemption has traditionally applied to white-collar workers, such as executive, administrative and professional employees or highly compensated employees (HCEs) who earn at least $100,000 per year.

The rule change issued earlier this year by the Department of Labor will more than double the salary threshold for overtime pay, raising it from $455 per week (or $23,660 per year) to $913 per week (or $47,476 per year). Going forward, automatic adjustments for inflation will be made to these figures every three years, starting in January of 2020.

In addition, the salary threshold for determining whether certain HCEs are exempt is also being increased, rising from $100,000 to $134,004 annually. HCEs must continue to receive the full standard salary amount of $913 per week on a salary or fee basis without regard to nondiscretionary bonus or incentive payments. But these payments will count toward the total annual compensation requirement.

Misclassification errors could result in costly overtime liability claims against your dealership.

Once the rule change becomes effective, some of your employees who haven't received overtime pay in the past may no longer be exempt. This could have a big impact on your dealership's operations and finances.

REVIEW JOB POSITIONS

In light of the upcoming rule change, you should take time now to review your salaried but exempt positions. In most dealerships, these include such positions as customer relationship managers, assistant department managers, business development center managers, assistant department managers and administrative assistants.

To preserve the exempt status of department managers who receive commissions, make sure that these employees' pay plans guarantee that they are paid at least the new annual salary threshold of $47,476. You can accomplish this by paying them a base salary or guaranteed commissions of at least this much.

Also take a close look at the actual duties being performed by your managers. Sometimes, dealerships give employees a "manager" title, but the employees aren't really performing duties that would exempt them from receiving overtime pay. Examples might include F&I managers and car wash/detail supervisors who aren't managing or overseeing other employees. Misclassification errors with employees like these could result in costly overtime liability claims against your dealership.

Here are a few more strategies to consider implementing before the rule change takes effect:

- Cap the number of hours that newly eligible overtime employees can work — this might require some planning in terms of shifting responsibilities so employees' workloads are more evenly distributed.
- Raise salaries above the new threshold — this could make sense for employees who are currently earning near the new threshold amount by keeping them exempt.
- Pay overtime wages to newly eligible employees.

In the last instance, you could, for example, pay these employees a salary for the first 40 hours worked per week plus overtime for hours worked beyond 40. Or you could pay them a salary for a workweek of more than 40 hours that includes extra compensation for overtime under certain conditions.

OVERTIME EXEMPTION: THREE TESTS

Three different tests can be used by dealerships to determine whether or not an employee is considered exempt for overtime wage purposes. They look at an employee's level of pay, how an employee is paid (salary or hourly), and the specific duties the employee performs.

A change to the Fair Labor Standards Act rule governing overtime pay, scheduled to take effect on December 1, 2016, mainly affects the first exemption test. The other two tests aren't significantly impacted by the rule change. For example, dealership employees must still receive a salary to be considered exempt — this means they are paid a fixed wage that can't be reduced due to variations in the quality or quantity of their work.

Also, employees must perform executive, administrative or professional job duties to be considered exempt. These generally include such tasks and responsibilities as supervising other employees and exercising discretion and independent judgment in the performance of their jobs.

GET EXPERT GUIDANCE

The right solution for your dealership will depend on a number of different factors. You should consult with your financial advisor and an attorney for guidance in your particular situation.

Vehicle recalls

Customers in, customers made permanent

More than 8.4 million airbags have been replaced at auto dealerships and other auto repair facilities during recalls over the last two years, according to the National Highway Traffic Safety Administration, and replacements continue to be made. The massive recall of defective airbags from a Japanese supplier was launched in 2015 after numerous vehicle occupants were injured or killed by flying metal shards propelled from the airbags during a crash.

SEIZE THE OPPORTUNITY

Recalls, as this massive recall shows, can create an avalanche of work for a service department in a relatively short period of time, disrupting normal operations and making it difficult to meet regular customers' service needs.

But on the upside, recalls present a tremendous opportunity to gain new service department

customers. According to the National Automobile Dealers Association (NADA), most car owners visiting a dealership for a recall typically don't have their vehicles serviced there. So a recall offers you the chance to impress new customers with outstanding service, boost your service department's reputation — and ultimately increase its revenue.

HANDLE CUSTOMERS CAREFULLY

Skillfully managing the recall process is the key. Most car owners aren't thrilled to bring their vehicles into the dealership for unplanned work. After all, it's an inconvenience for them, and they don't get any benefit other than knowing that the safety problem with their vehicle has been fixed.

One solution to this potential downside is appointing a dealership employee whose main job is to greet recall customers and make them feel welcome. This employee could explain how the recall process works, answer questions, and point customers to where they can go to get the process started. This person should have strong customer service skills and be able to soothe and reassure those who might be angry.

CREATE A RECALL TEAM

Dealing with upset customers is just one part of the challenge involved in handling recalls. The other is managing the additional volume of work.

NADA recommends creating a special recall team. It should include a top-notch service advisor responsible for managing the recall workflow through the service department. Also, part of the team should be several technicians who specialize in the particular kind of repair dictated by the recall.

KEEP NONRECALL CUSTOMERS SATISFIED

Yet another challenge is continuing to provide a high level of service to your regular customers while meeting your recall customers' needs. Doing so might require hiring extra service technicians on a part-time or temporary basis or transferring technicians from another location if you own multiple stores.

Also consider extending your service department hours during the recall period. You might even want to open your service department an extra day of the week during the recall.

REDESIGN WORKFLOW, TEMPORARILY

Recalls can bring in additional revenue for dealerships that are able to streamline their service department's workflow and maximize efficiency in the completion of the work. "If your service technicians can complete the recall repairs in less time than what has been budgeted for the repair by the manufacturer, the recall work becomes a profit center for the dealership," said a NADA spokesman.

Consider extending your service hours during the recall period, perhaps even opening the service department an extra day of the week.

The key is to temporarily redesign service department workflow so technicians can complete the recall repairs quickly and efficiently. For example, you could create a special "recall lane," where all of the necessary parts are lined up assembly-line style and the paperwork is already pulled together.

MAKE RECALLS PAY OFF

In addition to potentially gaining new customers, handling recall work efficiently and in a customer-friendly way also might result in higher customer service satisfaction scores, according to market researchers J.D. Power and Associates. J.D. Power's overall customer service index among customers who take their vehicles to a dealer for recall-related work rose from 777 in 2014 to 789 in 2015. Also, satisfaction is eight points higher among customers with a recall visit (789) than it is among customers with a repair visit (781).

Recalls can present challenges as your dealership rallies to keep up with the volume of work. But throughout the hectic activity, remember that your handling of recall work can pay off in terms of gaining new customers who appreciate your top-notch service.

In the crosshairs: Popular estate planning practice in jeopardy

A practice commonly used by many dealerships to reduce estate taxes could be on the chopping block. In August, the Treasury Department proposed new regulations that would place limits on the use of this practice by all family-owned businesses, including dealerships.

VALUATION DISCOUNTS

The practice involves discounting the value of ownership shares in a family-owned dealership when transferring them to heirs. These discounts are permitted due to a lack of control and marketability, which makes them harder to sell and thus worth less money.

By reducing the value of a dealership in this way, owners may be able to keep the value of their estate under the $10.9 million lifetime exclusion amount for married couples (or $5.45 million for individuals) for 2016. Estate and gift taxes are assessed at a top rate of 40% on all transferred assets above these amounts.

The proposed new regulations would make it harder for family-owned dealerships to obtain these discounts for lack of marketability and control. As a result, estates that are close to the exclusion amount could be pushed over the limit, thus subjecting heirs to estate and gift taxes.

Many family-owned dealerships have used this practice to reduce estate taxes since the IRS first began allowing it more than two decades ago.

WHAT THE REGULATIONS WOULD DO

Business valuators consider a variety of different factors when quantifying discounts for lack of control and marketability. These include:

- The nature of the business's underlying assets,
- Historical and expected income distributions,
- Rights and restrictions granted in a partnership agreement, and
- State laws and legal precedent.

The proposed new regulations would limit the use of valuation discounts by dealerships by disregarding some applicable restrictions on transferred interests when valuing the interests for gift or estate tax purposes. An applicable restriction is one that effectively limits the ability of the owner to liquidate his or her interest in the dealership, but which will lapse or can be removed, after a transfer, by the transferor and the family.

Current regulations limit the definition of an applicable restriction by requiring that it be more restrictive than the limitations that would apply under local law in the absence of the restriction. The proposed new regulations would change the definition of applicable restriction by eliminating the comparison to state laws' liquidation limits.

In addition, the proposed regulations identify some additional restrictions that may reduce the transfer tax value of an interest in a family-owned dealership despite not reducing the interest's value to the family member receiving it. These restrictions should be disregarded for transfer tax valuation purposes, the IRS believes. A restriction on an interest owner's right to sell that interest would be disregarded if the restriction would lapse after the transfer, or if the transferor and the family could remove or override the restriction.

The proposed new regulations would make it harder for family-owned dealerships to obtain discounts for lack of marketability and control.

The IRS also believes that some family-owned businesses have avoided the applicable restriction scenario described here by transferring a nominal interest in the business to a nonfamily member. The proposed regulations would ensure that the family alone wouldn't have the power to remove a restriction. Instead, the existence of such an interest would be recognized only if the interest were economically substantial and longstanding. The IRS has introduced a bright line set of criteria for determining whether such an interest is substantial and longstanding.

For example, a nonfamily member's interest wouldn't meet this criteria and would thus be disregarded if it had been held for less than three years before the transfer, represented less than 10% of the value of all ownership interests, or constituted less than 20% of the value of all ownership interests when combined with the interests of other nonfamily members. In addition, the nonfamily member would have to have a put right to require the business to redeem his or her interest within six months for a newly defined "minimum value" — and that value wouldn't recognize discounts.

WINDOW CLOSING FAST

Proposed regulations are subject to a 90-day public comment period. A public hearing on the regulations has been scheduled for December 1, 2016. Some of the regulations will be effective upon final issuance, and other parts won't take effect until at least 30 days after they're finalized.

Therefore, a small window might still exist during which time you can complete transfers of discounted ownership shares in your dealership to your heirs. But you should act quickly at this time — because this window will close fast. Consult with an estate planning professional or attorney on how these proposed regulations may impact your particular estate plan.

The future of autonomous vehicles

When many people think of self-driving or autonomous vehicles, they envision futuristic, Jetsons-like cars gliding above the surface of roads. But autonomous vehicles are already here — they just don't fly.

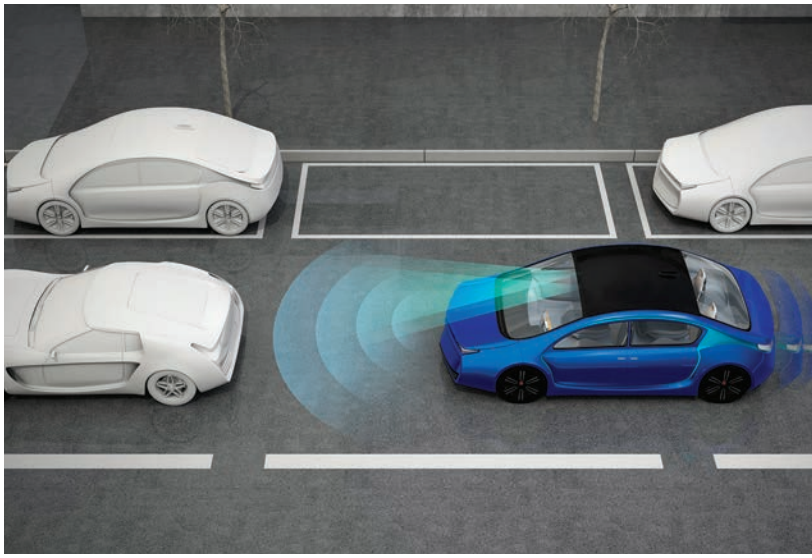
PROTOTYPES ON THE ROAD

A number of prototype autonomous vehicles have been introduced, including the Tesla Model S and the Google Self-Driving Car (or SDC). Automakers and technology companies have stated that they plan widespread introduction of self-driving vehicles to the market by 2020. Also, a recent report from BI Intelligence, a research service, predicts that there will be about 10 million self-driving cars on the road by this date.

The adoption of autonomous vehicles in the coming decades could have a profound impact on many aspects of the auto industry. For example, stricter adherence by consumers to manufacturers' recommended service processes could lead to more service business for dealerships as well as a need for more highly trained technicians.

MANDATORY INSPECTIONS CRITICAL

In a recent speech, National Automobile Dealers Association Chief Economist Steve Szakaly stressed the importance of regular inspections for autonomous vehicles. He said he believes mandated inspections



will be necessary if automakers want to avoid liability in the event autonomous vehicles crash.

It's a given that consumers will misunderstand or misuse autonomous vehicle technology, Szakaly said, which makes it critical that automakers do everything they can to ensure proper vehicle maintenance. If mandated service intervals aren't required and an autonomous vehicle's systems fail, the liability will fall on the manufacturer, he said.

It will be interesting to see how possible widespread consumer adoption of autonomous vehicles will affect the automobile industry — and society. It's a development well worth following.

Your success is our business

At Tyler, Simms & St. Sauveur we recognize that the challenges of owning and operating an automobile dealership are unique and ever changing. That's not only because your enterprise is essentially several different businesses rolled into one, each with its own special features. It's also because your business has evolved to where you need a CPA as well versed in estate and succession planning, tax strategies, and benefits administration as in dealership accounting, valuation, systems reviews and related areas.

Consequently, you need more than simply a CPA to prepare your taxes. You need an adviser who has invested time and effort into learning your industry and is trained in the dealership environment. At Tyler, Simms & St. Sauveur, we understand the challenges you face. Our professional staff includes former dealership CFOs and Controllers, so we know the demands placed on your people and how to lessen their burden. Most important, we realize that you now need more services than ever before, and we excel at delivering them.

To help you achieve your dealership's full potential — and make your job easier — we will meet with you quarterly to analyze your numbers and point out how you compare to your peers and where you may have opportunities to improve. We will not tell you how to run your dealership. But, drawing on our extensive experience, we will show what others have done to enhance their success and suggest ways you can do the same.

In addition to traditional audit, review, compilation and tax services, we can help you with:

- Operational audits
- Employee benefits consulting
- Estate and succession planning
- Management evaluations
- Business valuation
- Due diligence purchase systems reviews
- LIFO calculations and compliance
- Internal controls review
- Budgeting and forecasting
- Business consulting, and much more

Our expertise has enabled us to be instrumental in designing and presenting a series of accounting courses for the New Hampshire Automobile Dealers Association, and we have been featured speakers at NADA 20 groups. Also, we are members of Auto Team America, a national group of accounting firms specializing in dealership accounting that we meet with several times a year to discuss current and emerging industry issues.

Call us today at 603-653-0044 or visit www.tss-cpa.com to learn how Tyler, Simms & St. Sauveur is uniquely positioned to help you increase your success.