

READING AND RESPONSE

JULY 2006

LEGAL, LEGISLATIVE AND REGULATORY SUMMARY May 2006

By: Whann & Associates, LLC

With gas prices reaching over \$3 per gallon in many parts of the Country and fall elections coming up, Lawmakers have put the Country's energy policy and taking financial pressure off of consumers at the top of their agendas. One of the first priorities, passing Tax Cut Package that will benefit millions of taxpayers, came to fruition during the second week of May. House Leaders now hope to pass their version of the 2007 Budget Resolution, but since the Senate has added \$16 billion to its version of the Spending Plan and included a provision to open the Arctic National Wildlife Refuge to drilling, a conference will be required to work out the differences; and many are predicting that it will be a contentious one. The growing tension surrounding the Budget Resolution and finding a solution to growing energy concerns should make for an interesting summer. As if that weren't enough, Congress is also looking at ways to help small businesses provide health insurance to their employees.

- ***Federal Legislative Developments***

Congress Passes Tax Cut Package

The House and Senate surprised many by passing the contentious \$70 billion dollar Tax Cut Package earlier this month. Many predicted that partisan differences over the Measure would continue to be debated well past the Memorial Day recess. Republicans were able, however, to capture enough votes in both Chambers to permit it to advance under special rules blocking Senate Democrats from filibustering it.

The Bill sets the tax rate for capital gains and dividends at 15 percent for most taxpayers through 2010 and, as a result of provisions increasing income levels exempt from the Alternative Minimum Tax (AMT) by approximately \$4,000 for single filers and \$4,500 for joint filers, it is estimated that fifteen million less taxpayers will be responsible for paying the higher tax. In order to offset the tax cuts, the Legislation will allow people with an adjusted gross income of more than \$100,000 to convert their traditional IRAs to Roth IRAs (something which is now permitted only for taxpayers below that income threshold). The Measure will also extend for two years provisions sought by small businesses, such as independent car dealers, to let them write off up to \$100,000 in investments in equipment. Congress is expected to take up a second tax bill later this session that contains \$30 billion in widely supported tax incentives.

Lawmakers Continue Negotiating for Energy Solutions

With gas prices steadily increasing over the past few weeks, Lawmakers are eager to relieve the financial burden on consumers. Unfortunately for those planning to travel this summer, any proposed solutions probably won't stop the rising gas prices, which are expected to continue climbing during the next several months. This is only the beginning of the problem. As we've learned through history, when gas prices increase, the sale of vehicles, in particular sport utility vehicles and large pick up trucks, are negatively impacted.

Senate and House Leaders abandoned a proposal to send most taxpayers \$100 gas tax rebate checks on May 2nd, sparking more energy negotiations. The plan was to show voters that Lawmakers were trying to bring immediate relief from the high gasoline prices, but few were impressed by the effort. This also would have had little impact on the wholesale industry. A group of Senate Republicans are putting together yet another package of energy proposals likely to include initiatives to promote the development of pipelines and refineries, address alternative fuels, offshore energy production and energy exploration in ANWR. It also included provisions designed to help the government crack down on price gouging, giving the Transportation Department the power to boost vehicle fuel-economy standards and repeal tax incentives for oil companies while expanding incentives for buying hybrid vehicles.

House Leaders were unable to garnish enough votes to pass a Measure aimed at increasing U.S. refinery capacity (H.R. 5254) in May, but they were able to get enough support to pass H.R. 5253, which would make oil and gasoline price gouging a federal crime. The House Energy and Commerce Chairman vowed that the Refinery Bill would return to the floor and predicted it would pass under normal rules. Both Bills were presented under suspension of the rules, an expedited procedure that bars amendments and requires a two-thirds majority for passage. The House Majority Leader also stated that a Bill to authorize drilling in ANWR will likely follow sometime in June. According to the results of a Congressional Research Service report released by the House Resources Chairman on May 2nd, ANWR could raise between \$76 billion and \$118 billion in corporate income taxes and \$35 billion to \$55 billion in royalties, but efforts to pass the ANWR provisions have been blocked in Congress repeatedly.

High Gasoline Prices Prompt Another Look at Increasing Fuel Economy Standards

On May 11th, the House Energy and Commerce Committee voted 36-17 against a proposal to increase fuel economy standards for cars and light trucks. The vote was the first on fuel economy standards since the public outcry over the dramatic increase in gasoline prices. The Measure would have required cars and trucks together to average 33 mpg by 2015 compared to today's average of about 25 mpg. The Committee did, however, vote in favor of a Bill giving the Administration authority to change fuel economy rules for cars in ways similar to its recent overhaul of rules for trucks. The Bill will be considered by the full House next and is likely to be a target for more amendments designed to address energy issues. Some Senators also called for an increase in the fuel economy standards at a Senate Commerce Committee hearing on May 10th, at which time the Transportation Secretary reiterated the Administration's opposition to imposing tougher mileage requirements until the federal fuel economy rules are amended to be more flexible for industry. At the present time, these Measures should not have a significant impact on the used vehicle marketplace like some Bills have in the past.

Senate Addresses Small Business Health Insurance Needs

The high cost of health insurance impedes many small businesses from offering insurance benefits to their employees. As part of a weeklong focus on healthcare, Senate Leaders brought to the floor Legislation that would decrease premiums for small businesses and provide an estimated 600,000 people the opportunity to obtain private coverage during the first week of May. Two Measures, S. 406 and S. 1955, are pending in the Senate that would allow small businesses to join together to purchase health insurance. S. 1955 was approved by the Health, Education, Labor and Pensions Committee and is headed to the Senate floor. Unlike S. 406, it would only allow insurers to offer plans across state lines and bypass state mandates of the types of services that must be covered if one of the policies offered matches a policy offered to state employees in California, Texas, New York, Florida, or Illinois, which are the most populous states. Under an amendment to be offered by Senator Snowe, the sponsor of S. 406, the new small-business plans would have to comply with state mandates that at least 26 states have in

place. The House is expected to consider similar proposals during its own "Health Week," which is yet to be scheduled.

- ***Federal Regulatory Activity***

NHTSA Clarifies Application of Tire Placard Rule

In November, numerous Trade Organizations within the motor vehicle industry, including the NIADA, wrote to the National Highway Traffic Safety Association (NHTSA) regarding the Tire Safety Information Rule, Federal Motor Vehicle Safety Standard No. 110. We requested a letter of interpretation on the applicability of the requirement to update the tire placard or label after the vehicle's first retail sale. The issue was whether or not a "vehicle modifier," or an entity that modifies motor vehicles after the first retail sale, is required to update a vehicle's tire safety placard if a vehicle's tire size, cold inflation pressure, and/or cargo capacity rating changes. On April 7, 2006, NHTSA responded by confirming that the placard and labeling requirements do not apply to any modifications made to a vehicle after the first retail sale. NHTSA cautioned, however, that entities that modify a vehicle such that the tire safety information is no longer accurate should either add a new label to the vehicle or add a warning label indicating that the information on the tire safety placard is no longer accurate. NHTSA stressed that taking these steps could help avoid the risk of vehicle operators over-inflating or under inflating tires or buying incorrect replacement tires.

FTC Releases Annual Report on Fair Debt Collection Practices Act

The Federal Trade Commission (FTC) has released its 28th Annual Report to Congress on the Fair Debt Collection Practices Act (FDCPA). The FDCPA prohibits abusive, deceptive, and other improper debt collection practices by third-party debt collectors. The Report summarizes the types of complaints filed by consumers, the FTC's enforcement actions, and the FTC's consumer and industry education initiatives in 2005. Consumers filed 66,627 complaints against third party debt collectors last year, the most complaints filed with the FTC against one specific industry, most of which contained allegations that collectors demanded larger payments than permitted by law, harassed debtors, used false or misleading threats of what could happen if the debt wasn't paid, called debtors at work, failed to send required notices and continued to contact debtors after receiving requests to cease.

The FTC also included eight recommendations for amendments to the FDCPA in the Report which it believes will help to protect consumers and strengthen law enforcement effectiveness as follows: (1) make explicit the standard for clarity for collectors' notices to consumers; (2) clarify that debt collectors may continue their collection activities during a thirty-day period set aside for consumer to dispute their purported debts, unless a consumer, in writing, disputes or requests verification of the debt; (3) exempt attorneys who pursue debtors solely through litigation or similar legal practices from the FDCPA's provisions; (4) allow the FTC to issue model debt collection letters for optional use by debt collectors; (5) clarify that collectors may communicate with a consumer only once after receiving a "cease communication" notice; (6) expressly require collectors to take certain actions in response to a consumer's oral notification that the consumer dispute the purported debt; (7) require collectors to itemize their charges to consumers; and (8) encourage collectors to provide the name and address of the original creditor of the debt in the first communication with consumers. The FTC has sought public comment on many of these issues over the past several years.

- **Activity of Interest**

California's Car Buyer's Bill of Rights Becomes Effective on July 1st

In order to comply with new requirements under California's Car Buyer's Bill of Rights that becomes effective on July 1, 2006, most dealers will have to change both their paperwork and their sales presentation and, in some cases, even how they evaluate vehicles before they advertise them for sale. For example, the new provisions define which used vehicles are eligible to be advertised as "certified," and prior to sale, a dealer must provide the buyer with a completed inspection report indicating all the components inspected. Before the purchase or lease of a vehicle, consumers must also be informed of their credit score in certain situations and, for purchase, dealers must provide a separate form that describes and states the price of any service contract, insurance product, GAP waiver, surface protection product, theft deterrent device and contract cancellation option agreement. Speaking of the "contract cancellation option agreement," dealers must offer a three-day contract cancellation option with the retail sale of a used vehicle having a purchase price of less than \$40,000, in exchange for a fee of up to \$250 and, with some exceptions, dealer finance income will be limited to 2.5 percent for contracts of 60 months or less and 2 percent for contracts more than 60 months. If you are selling motor vehicles in California and haven't done so already, now is the time to update your paperwork and put new procedures in place.

Florida Business Owners Arrested for Deceptive Practices Related to Salvage Vehicles

The Florida Department of Financial Services' Division of Insurance Fraud (DIF) recently led an investigation that resulted in the arrest of two Florida residents for allegedly defrauding insurers and reselling salvage and rebuilt vehicles to unsuspecting purchasers. The owner and an employee of Total Fleet Solution (TFS), a company that was contracted to appraise damage on rental cars and file claims with insurance companies, have been charged with several counts of filing false and fraudulent insurance claims, grand theft, and forgery. TFS allegedly billed insurers close to \$800,000 in exaggerated damage estimates that they reported as total losses to collect higher payments from the insurance companies. Many of the appraisals were made by looking at photographs of the vehicles rather than conducting an actual on-site inspection. TFS then sold the vehicles to unsuspecting dealers without branding the titles as salvage or rebuilt. The Florida DIF is seeking more than \$1 million in restitution and is encouraging consumers and dealers alike to check its website to determine whether the VINs of any recently purchased vehicles match any of the VINs for the estimated 120 vehicles sold by these individuals.

- **Case of the Month**

So You Don't Want to Buy That Car Back?

Earlier this month I spoke on compliance issues at the National Association of Buy Here-Pay Here Dealer's Conference. At the conclusion of the presentation, a dealer approached me with a car deal in hand and a letter from a bank requesting that he buy back the deal for breaching the warranty in his dealer agreement stating that all of his paperwork and policies were in accordance with the law. The customer had stopped paying, the bank repossessed the car and filed a collection action, and the consumer's lawyer raised the defense that the dealer's paperwork did not comply with the law. Sound familiar to anyone? The dealer asked me to take a look at the deal hoping that I could tell him he did not have to buy it back. Unfortunately, the paperwork was outdated and was obtained from many different sources, resulting in inconsistent provisions. After a quick look it became clear that I had to inform him that he had breached his warranty with the bank.

If this real life example hits too close to home, or if you would like to prevent it before it does happen to you, I have just the solution. At this year's NIADA Convention, I will be offering, along with Deanna, a seminar on Thursday, June 8th at 3:00 p.m. entitled, "Building a Bankable Car Deal." We will go through your car deal from start to finish and offer tips on preventing problems, increasing profitability, and building a bankable car deal. Remember, often times the easiest way to prevent problems is to keep them from happening. So grab a car deal....and we'll see you in Vegas.

Unforgettable Appointments
By
Jan Kelly

- Q. How can I assist customers in keeping their appointments?
- A. In the current marketplace, many customers will begin their vehicle search on the web. They are mostly looking for a certain piece of inventory. The keyboard and mouse are easier on the pocket book than driving all over town to find the right vehicle.

The web will generate an inquiry from the customer. Hopefully a timely response will make the appointment process a warm invitation for the customer to make a personal appearance to see, touch and drive the vehicle for themselves.

Most new sales consultants set appointments on the hour. However, studies have shown that customers are either late for appointments set on the hour or sometimes do not keep them at all. If you want to set appointments that will stick, follow the doctors' advice and set them on the odd minutes – for example, 10:22 a.m. or 10:42 a.m. or 11:12 a.m.

One of my sales consultants, Mike, made appointments on the "7" minutes -- 9:17 a.m. / 9:27 a.m. / 10:47 a.m. So even if a customer did not recall his name, we all knew it was Mike by the odd time of the appointment. Most of his appointments were kept and, in fact, the customers were usually a little early. Now, Mike's secret was not only the odd minutes; he also placed a reminder courtesy telephone call the evening prior to the appointment. If Mike was busy with customers he would ask the receptionist, the sales manager, or even the F&I manager to make the reminder calls for him. A dealership's business development center staff is also a good resource for reminder calls.

So here is your own reminder list for helping your customers keep their appointments:

- 1) Be warm and friendly.
- 2) Set the appointment on odd minutes rather than the hour or half hour.
- 3) Confirm the appointment by phone the evening prior to the appointment.
- 4) Leave wiggle room for the customer, since life happens and they may need to reschedule.
- 5) Send a thank you note to the customer for making the appointment. Send another note after the appointment was kept.
- 6) If the customer keeps the appointment and does not make a purchase from you today, they *will* purchase some day, and when the time is right you want them to feel great about doing business with you.

Article written by: Jan Kelly, President of Kelly Enterprises. She is a sales trainer and consultant, convention speaker, and writes frequently for industry publications. For information about training opportunities telephone 800.336.4275 or contact Kelly Enterprises at www.JLKelly.com.

Kelly Enterprises Financial Center (F&I) '06 Summer-Fall Seminar Schedule

- Portland, OR	July 10-14
- Irvine, CA	August 14-18
- Baltimore, MD	September 18-22
- Portland, OR	October 9-13
- Dallas, TX	November 13-17
- Vancouver, WA	December 11-15

ODAC Updates

The Oregon Dealer Advisory Committee was originally formed to review sanctions against dealers by DMV. The committee has since grown into a committee which works with DMV, The Department of Justice and representatives from related auto industries to improve methods and procedures by DMV and the Industry, oversee educational programs for the industry, and introduce new legislation to improve operations.

The committee is currently working on a procedure to change the method for obtaining and transferring a replacement title. Under the present method a replacement title application must be submitted in the current owners name to DMV. When the replacement title is received by the Dealer, they can then transfer the replacement title to the new owner. This incurs double transfer fees of \$55 for each step. In addition, because the replacement title is often sent back to the original owner, the Dealer must track it down in order to transfer it to the new owner. These steps are required because the federal odometer laws require that both parties acknowledge the odometer reading and release interest on the back of the title. A new method would allow for duplicating and transferring in the same operation, thereby only incurring one transfer fee.

Additional items being worked on are:

- Background checks on all new dealers, and the authority to deny license's to individuals convicted of certain felony crimes.
- A new Vehicle appraiser's license.

The committee meets every other month January thru December in Salem. We will keep you advised of progress in these and other items in the Squeaky Wheel as they progress.

DMV Finds Many Dealerships in Oregon Still Unclear On the Sticker Scraping Law.

STICKER SCRAPING AND TRIP PERMITS

Effective January 1, 2004 all licensed vehicle dealers and towers must remove the registration year stickers from both registration plates of Oregon passenger vehicles they sell when they are **not** also submitting title documents to DMV on behalf of the customer or selling the vehicle to another licensed dealer. Dealers/towers should scrape the “year” sticker only (not the month sticker) off both registration plates. Based on this law, DMV has created a new 10-day trip permit form 307) for use specifically on passenger vehicles where the stickers have been scraped. Dealers/towers may issue up to two 10-day trip permits per vehicle for \$10 each if the registration year stickers have been removed and the customer will be submitting their own paperwork to DMV. (If you are submitting DMV paperwork on behalf of the customer, you are not required to scrape the registration stickers and may not issue a 10-day trip permit.) *If you do not have trip permits you must refer the customer to DMV to either purchase a 21 day trip permit or transfer the title and obtain replacement stickers. This should be done before the customer drives off in the vehicle. Keep in mind that you may only issue a Temporary Permit if you are submitting the combined title and registration application to DMV on behalf of the customer.*

These new trip permits are available for sale from DMV Business Licensing. The new trip permits are not available for purchase at DMV Field Offices. Licensed towers who need to begin selling these permits must contact Business Licensing about signing an Agreement to Issue Oregon Trip Permits (form 7115).

CONSIGNMENTS AND STICKER SCRAPING

Questions have been raised as to whether or not certified vehicle dealers should be scraping valid registration stickers from consigned vehicles. A quick look at Oregon Revised Statutes will resolve these questions. ORS 822.005 defines what constitutes dealer activity. Section (a) includes the activity of selling vehicles on consignment. Section (c) takes this further stating, “Acts as any type of agent for the owner of a vehicle to sell the vehicle.” Any vehicle consigned to and sold by a certified vehicle dealer is a dealer sale, not a private party sale by the registered owner of the vehicle. This year legislation was enacted requiring the scraping of year registration stickers from vehicle registration plates by certified vehicle dealers when the dealer is not submitting the title and registration paper work for the purchaser of the vehicle. There is no exception for dealer sales of consigned vehicles. For example, let’s assume that a charitable organization has consigned several donated vehicles to a certified vehicle dealer who will auction off the vehicles. The dealer does not submit title and registration papers for the purchasers. The dealer is required to remove the year registration stickers from each vehicle before the purchaser is given possession of the vehicle.

HEALTH INSURANCE AND OTHER EMPLOYEE BENEFITS

By: Hecht & Hecht Insurance Agency Inc

Does your Employee Benefits broker represent a wide variety of quality insurance companies or does he/she work for just a single insuring carrier. Brokers and insurance agents should work for you and your best interests, and in order to do so, they need access to the majority of available insurance markets in your geographic area.

The health insurance delivery system has become so complex it is almost impossible for an individual or a company to navigate all alone. There are so many options from which to choose. There are Preferred Provider Organizations (PPO), Health Maintenance Organizations (HMO), Health Saving Accounts (HAS), Health Reimbursement Accounts (HRA), funded and self funded health insurance and Point of Service Plans (POS). Which one is best for you or your dealership?

Sorting out the correct plan for you is the job of a professional insurance agent or broker. Instead of shopping for health insurance coverage, it is important to shop for the agent or broker that can get to know you and your company. One that will take the time to know your business and your financial goals. One that can match your needs with correct insurance products.

So here are some questions to ask your broker or any prospective broker:

1. How long has he or she been in the health insurance business? What health insurance companies does he/she represent? Is he/she an employee of one insurance company or a broker for several?
2. Does your broker have an in-house customer service department? Most brokers believe they can be more cost effective by leaving customer service to the insurance carrier. However, it has been proven time and again, having a third party who understands the process, can help save customers time and money. Having a broker that provides support for you and your employees will help you get the most from your benefit plan.
3. How does your broker help with controlling your increasing insurance costs? Many brokers/agents grasp at short-term solutions to health care insurance. To often you hear agents and brokers say, "This year's renewal premium are up because health care services have increased again". Or "a way to reduce increased costs to the company is shift more of the insurance cost to the employee". New approaches to controlling claim cost are now appearing and becoming an integral part of a successful health care plan. For example, on-site wellness programs, consumer education tools, predictive modeling and innovative care management are just a few programs that address the real problem of rising health care costs.
4. When did your broker/agent last review and renegotiate your contract? Vendor service and pricing can be extremely complex and confusing. This can make investigating new insurance and renegotiating new coverage a painstaking process that many companies just put off or continue to avoid. However, changing market conditions and new competition and products often-present excellent opportunities to gain much better pricing and service levels. Through intense analysis and negotiation a broker should have the ability to improve the terms of health insurance contracts and at the same time provide for cost effective delivery.
5. Does your agent/broker perform thorough due diligence with every health organization they represent? Health Insurance Providers move in and out of the marketplace. There arrangements with the health care networks (doctor organizations and hospitals) continually change. It is important that your agent/broker stay attuned to the financial well-being of each and every carrier they represent.

As the Agent of Record for the Oregon Independent Auto Dealers Association, Hecht and Hecht Insurance Agency, Inc. takes pride in knowing we provide all of these services for our clients. For more information on benefit plans for your dealership please feel free to contact Matt Henniger at 503-288-6371. We are a full service insurance agency and can provide information, rates and coverage for all your insurance needs. Contact us at info@hechtinsur.com or 800-285-1773.

READING & RESPONSE FORM

OIADA CONTINUING EDUCATION PROGRAM

Complete this test or the Certificate of Completion form for July 2006

ARTICLE:

QUESTION

LLR

One of the FTC's 8 recommendations for amendments to the FDCPA is to allow collectors to communicate with a debtor only once after receiving a "cease communications" notice.

(1) True ____ False ____

Kelly's Corner

In today's marketplace many customers will begin their vehicle search on the web.

(2) True ____ False ____

LLR

On May 11, the House Energy and Commerce Committee voted for a proposal to increase fuel economy standards for cars and light trucks.

(3) True ____ False ____

ODAC Updates

Background checks on all new dealers, and the authority to deny license's to individuals convicted of certain felony crimes is among the current topics of ODAC.

(4) True ____ False ____

DMV –
Sticker Scraping

All licensed vehicle dealers and towers must remove the registration year stickers from both registration plates of Oregon passenger vehicles they sell, when they are not also submitting title documents to DMV on behalf of the customer or selling the vehicle to another licensed dealer.

(5) True ____ False ____

Hecht & Hecht

Instead of shopping for health insurance coverage, it is important to shop for the agent or broker that can get to know you and your company.

(6) True ____ False ____

LLR

NHTSA confirmed that placard and labeling requirements do not apply to any modifications made to a vehicle after the first retail sale.

(7) True ____ False ____

Kelly's Korner

To help customers keep appointments, set the appointments on odd minutes rather than the hour.

(8) True ____ False ____

I certify to OIADA that I have personally read these articles in Squeaky Wheel Magazine issue **July 2006 Continuing Education July 2006 Continuing Education Packet # 7-06**

Signed: _____ Date _____

Answers: (1) T, (2) T, (3) F, (4) T, (5) T, (6) T, (7) T, (8) T