



LEGAL BULLETIN #144/2020 December 23, 2020

YEAR-END REPORTING AND OTHER IMPORTANT COMPLIANCE ITEMS

[The following information was compiled for members by our tax advisors, O'Connor & Drew, P.C. This information will apply generally to all dealerships, but you are advised to seek advice from your own counsel for your dealership's particular circumstances.]

COMPLIANCE CHECKLIST FOR W-2s, 1099s, AND CASH REPORTING:

1. Have you included the following items in each employee's final payroll, which will be included on the Form W-2?
 - Year-end Bonuses
 - Use of Demonstrators (see below)
 - Cost of Group-Term Life Insurance Coverage in Excess of \$50,000
 - Cost of Shareholder's Health Insurance Premiums and Other Fringe Benefits
 - Aggregate Cost of Employer-Sponsored Health Insurance Coverage to be Included on W-2 (box 12, code DD) if file 250 or more W-2s . . . **However, Amount is Not Taxable**
 - Separate employer reporting requirements for "applicable large employers" (Forms 1094-C and 1095-C) under the Affordable Care Act are required for the 2020 tax year. Self-insured employers will need to file additional Forms 1094-B and 1095-B to report information about covered individuals.
2. Issue all appropriate 1099s and W-2s to recipients, the Internal Revenue Service, and the Massachusetts Department of Revenue by February 1, 2021.
 - Report on Form 1099-NEC - Non-employee Compensation Paid to Unincorporated Service Providers
 - Report on 1099-MISC - Rents Paid to Unincorporated Lessors:
 - NOTE: Reporting is not required for services under \$600.
 - Report for attorneys - All payments, whether or not incorporated. Payments for legal services, but not for the attorney's services, report on Form 1099-MISC; payment for attorney's fees, report on Form 1099-NEC.
 - Report on Form 1099-INT - Imputed Interest on Shareholder Loans
 - Use 1099-B for Settlement Payments (all payments)
3. All customers for whom you filed a Form 8300 ("Report of Cash Payments over \$10,000") during 2020 must receive notification on your letterhead by January 31, 2021.
4. Employer's obligation under .9% additional Medicare tax
 - Applies to wages and compensation (including taxable fringe benefit) in excess of threshold amount paid in a calendar year;
 - Required withholding starts in the pay period in which wages and compensation paid to an employee exceeds \$200,000, regardless of filing status and wages paid to the employee by another employer;
 - Employee cannot request that additional amounts be withheld specifically for additional Medicare tax, but can increase Federal income tax withholding with any excess income tax applied to other taxes due (including additional Medicare tax) upon the filing of the employee's income tax return.
5. Employer's **do not** have an obligation to withhold taxes for the 3.8% Medicare Contribution tax, although employees may elect to increase their Federal income tax withheld to account for these taxes to be applied appropriately upon the filing of their income tax return.

REPORTING FOR DEMONSTRATORS

For the Year Ending December 31, 2020: As of January 1, 2002, IRS Revenue Procedure 2001-56 sets forth the requirements for a dealer to report demonstrator vehicles provided to their employees. Be sure that appropriate amounts are included in each of the employee's gross wages. The total 2020 inclusion amount should be reflected in box 14 of each employee's Form W-2.



For the Year Ending December 31, 2021:

- For January 2021 continue to use daily inclusion amounts calculated under the Annual Average Look Back Method based upon your December 31, 2019, factory financial statements (the amount used in 2020).
- Once your December 31, 2020, factory financial statements are completed, you must recalculate your daily inclusion amounts under the Annual Average Look Back Method.
- Apply the new daily inclusion amounts beginning in the first reporting period for February 2021.

NOTE: Please refer to MSADA Bulletin #2 (02/04/02) for a detailed discussion of Revenue Procedure 2001-56. Also, see NADA Management Guide L.17, *Federal Tax Treatment of Demos (June 2002)*.

CORPORATE TAX UPDATE

De Minimis Safe Harbor Election: This annual election allows for the expensing of low-cost assets up to \$5,000 for entities with audited financial statements, or \$2,500 for all other entities. Items within the scope of the de minimis safe harbor election are treated as deductible expenses and not depreciable capital assets.

S Corp Surtax: The Massachusetts S Corporation "surtax" is currently scheduled to be 2% for 2020 for corporations with total receipts between \$6 million and \$9 million. For corporations with total receipts greater than \$9 million, the rate is currently scheduled to be 3% in 2020.

§179 Limitation: For 2020, the §179 limitation amount is \$1,040,000. The §179 deduction is reduced dollar for dollar for qualifying property placed in service during the tax year that is in excess of \$2,590,000. This is an entity by entity limitation, not an aggregate limitation.

Bonus Depreciation: For 2020, taxpayers that have floor plan financing interest that is taken into account under the section 163(j) business interest expense limitation are disqualified from taking bonus depreciation. However, see Prop. Reg. 1.168(k)-2 and NADA Headlines (9/16/19) to see if you may still qualify for bonus depreciation.

Luxury Automobile Depreciation Limits: For vehicles placed in service in 2020 with a gross vehicle weight of under 6,000 pounds, the maximum first year depreciation allowed is \$10,100 without bonus depreciation and \$18,100 with bonus depreciation.

Paycheck Protection Program (PPP) Loans: IRS Notice 2020-32, and subsequently Rev.Rul. 2020-27, provided that no deduction would be allowed for federal tax purposes for expenses paid with forgiven PPP loans. However, as part of the pending COVID relief bill, Congress intends to allow expenses paid with PPP loans to be deductible for borrowers. At the time of this writing, the House and Senate have passed the bill as part of the Consolidated Appropriations Act of 2021, but it is uncertain as to whether President Trump will sign the bill. The relief bill also creates a second round of PPP loan draws for borrowers with 300 or less employees that can demonstrate a 25% drop in gross receipts for any 2020 quarter as compared to the same quarter in 2019.

Employee Retention Credit: The Employee Retention Credit (ERC) is a refundable tax credit against certain employment taxes equal to 50% of the qualified wages paid by an eligible employer. This credit, established in the CARES Act, has not been available for businesses that took out PPP loans. However, along with the pending COVID relief bill, another section of the bill allows PPP borrowers to retroactively take this credit, with the caveat that the same wages cannot be used for both the ERC and PPP forgiveness. Additionally, for 2021, the relief bill will relax the requirements for an employer to qualify for the ERC and increase the potential maximum amount of credit for an eligible employer.

THE MASSACHUSETTS MINIMUM WAGE INCREASES IN 2021

Effective January 1, 2021, the Massachusetts minimum wage rate is \$13.50 per hour.

IMPORTANT PAYROLL LIMITS FOR 2020 & 2021

FICA Limit: For 2020, the maximum wages subject to FICA tax is \$137,700. In 2021, this wage base limit increases to \$142,800. Medicare wages have no limitation.

401(k) Contribution Limits: The maximum deferral under a 401(k) plan is \$19,500 for 2020. Additionally, any participant who will be age 50 or older as of December 31, 2020, may contribute an additional \$6,500 for 2020 as a "catch-up contribution".



Mileage Reimbursement Rate: The IRS has not yet released the standard business mileage reimbursement rate beginning on January 1, 2021. The rate will likely be close to 2020's 57.5 cents per mile.

PUT LIFO ESTIMATE ON 12TH MONTH (DECEMBER) FACTORY STATEMENT

A reasonable estimate of the change in the LIFO reserve must be booked and appear on the 12th month factory financial statement. For calendar year taxpayers, this would be the December statement. Failure to record a LIFO adjustment on the 12th month statement could result in termination of the LIFO election and recapture of the LIFO reserve into income.

COMPLIANCE WITH THE ADDRESS DISCREPANCY, "RED FLAGS", AND SAFEGUARDS RULES

The Federal Trade Commission (FTC) has enacted three rules in recent years relating to the protection of consumers against the threat of identity theft: the Address Discrepancy Rule, the "Red Flags" Rule, and the Safeguards Rule. Auto dealers are required to comply with each of these rules due to their involvement in finance and lease transactions. While these rules have been in effect for several years, it is important to note that compliance is an ongoing process. The FTC reserves the right to audit any organization within its jurisdiction at any time. As a result, any dealer that is not in full compliance with these laws should take the necessary steps to do so as soon as possible.

Address Discrepancy Rule: The deadline for implementing the Address Discrepancy Rule was November 1, 2008. This rule requires consumer reporting agencies to issue a notice of address discrepancy to any user of a credit report when the address provided to the consumer reporting agency substantially differs from the address on the credit report. The dealership must implement, and document in writing, policies and procedures to reasonably conclude that the consumer report relates to the consumer for whom the dealership requested the report.

Red Flags Rule: The Red Flags Rule went into effect on November 1, 2008; however, the FTC delayed enforcement of the Rule until January 1, 2011. This rule is a requirement for any organization that opens an account with a customer in which the payments are deferred. Dealers are required to develop, implement, and maintain policies and procedures to prevent, detect, and respond to identity theft. Penalties range from \$2,500 to \$11,000 per violation, and that does not factor the extensive legal fees that could result from the threat of a lawsuit. As with the Safeguards Rule, the Red Flags Rule requires that the dealer document the entire compliance effort, which can be summarized by the following steps:

1. Appoint a Compliance Officer
2. Perform a risk assessment in which you identify the "covered accounts" and the "red flags" that could indicate the potential of identity theft within those accounts
3. Develop policies and procedures that detect and respond to the red flags
4. Document the policies and procedures in a written Identity Theft Prevention Program
5. Employee training
6. Agreements with service providers
7. Senior management's approval
8. Annual compliance reports

Safeguards Rule: The Safeguards Rule has been in effect since May 23, 2003. The main objective of this rule is to outline the policies and procedures that are in place to safeguard non-public customer information. These policies and procedures must be outlined in an Information Security Program. If you are not in compliance, you should still do so even though you are past the May 2003 deadline. The Information Security Program must be in writing and must include the following five specific components:

- Designate a compliance officer(s)
- Identify and assess foreseeable risks to customer info
- Design and implement internal controls
- Agreements with service providers
- Monitor and evaluate compliance

Monitor Compliance: The requirement to monitor and evaluate compliance is an ongoing process. It is important to regularly evaluate the policies and procedures in place to be sure that your dealership is in full compliance with the Safeguards Rule. The written Information Security Program should be revised when necessary. Compliance does not end with the written Information Security Program.

NOTE: MSADA and O'Connor & Drew have developed a Safeguards Rule Compliance program for Massachusetts dealers. Materials are available as a self-install kit including CD and materials written by the Association of F&I



Professionals (AFIP), or as a full-service program, which includes installation and compliance review by accountants from O'Connor & Drew. For additional information on the self-install kit, call MSADA at (617) 451-1051; for the comprehensive program, call Frank O'Brien at O'Connor & Drew, (617) 471-1120.

ADDITIONAL RESOURCES AVAILABLE

For more information on any of the above topics, MSADA members may be referred to Lauren Carnes at O'Connor & Drew as a member service. For an MSADA referral, please contact Robert O'Koniewski, rokoniewski@msada.org, or call (617) 451-1051. Also, past MSADA bulletins and much more are posted at www.msada.org, a free service to MSADA members.

MSADA - YOUR DEALER ANSWER PLACE

If you have any questions regarding this bulletin, please contact Robert O'Koniewski, Esq., MSADA Executive Vice President, by e-mail at rokoniewski@msada.org, or Peter Brennan, Esq., MSADA staff attorney, by e-mail at pbrennan@msada.org, or either by phone at (617) 451-1051.