DEALER DECEMBER 2014 DEADLINES: Vehicle Finance Contract Revisions and AAA Arbitration Wording Review; and Note of 2015 Business Tax Appeal Filing

By Peter K. Bauer

Retail Vehicle Installment Sale Contracts Now Regulated under PA Consumer Credit Code's Motor Vehicle Sales Finance Provisions

In September 2014, dealers received a letter from the Department of Banking ("Banking") regarding the repeal and replacement of the Motor Vehicle Sales Finance Act ("MVSFA") with the Motor Vehicle Sales Finance provisions ("MVSF") under the new Consumer Credit Code ("Credit Code"). This change was effective on December 1, 2014. Act 98 of 2013 created a combined Credit Code, which updated, modified, and consolidated governing retail vehicle installment sale contracts ("RISC") under the MVSF. Another component of the Credit Code involves other goods and services that are sold and paid for over time (that are non-vehicle purchases), such as furniture, department store credit cards, etc. A link to the Act is available on Banking's website at www.dobs.state.pa.us.

The new MVSF applies to indirect lending instances, where a RISC is entered into by the dealer, as the installment seller. Then, the dealer has the option of either assigning the RISC to a licensed sales finance company (manufacturer credit arm, or other financing source), or retaining the RISC on a buy-here/pay-here basis.

While the new MVSF provisions incorporated most of the MVSFA's terms and requirements, there were changes that were made to the MVSF consistent with federal and state financing regulations, as well as PennDOT's Vehicle Code, Federal Motor Carrier Safety heavy truck regulations, etc. Additionally, the MVSF provisions do require several new RISC wording revisions to be made to the written contract. These are different from the old MVSFA and the new MVSF includes these highlighted items (among other revisions) to be reflected in a revised RISC:

- The RISC must contain a statement that a customer may have additional rights under the Unfair Trade Practices and Consumer Protection Law. (As of December 1, 2014, a dealer must ensure all RISCs contain this new, required disclosure.)

- The RISC may contain an acceleration clause that authorizes the dealer or contract holder to declare the entire balance due and payable, if the customer provides intentionally fraudulent and misleading information on a credit application; files for bankruptcy; or defaults in the payment of a cross-collateralized obligation.
- Only the costs of necessary repairs disclosed at the time of the installment sale may be included in the contract. For example, in a buy-here/pay-here contract instance, necessary repair costs occurring after the contract's execution may not be added to the original contract repayment obligation.

A dealer will need to ensure these highlighted, relevant and applicable wording changes (among other revisions) are incorporated into a new, revised RISC used by the dealer, provided by an indirect lender (manufacturer credit arm, or other financing source), or form provider, such as Reynolds and Reynolds. Like advertising created for a dealer's use, ultimate responsibility for using a MVSF compliant RISC with a customer is the dealer's responsibility, regardless of the source of the RISC, dealer, indirect lender or form provider. ■

Arbitration Clauses Referencing American Arbitration Association Require Wording Preapproval and Fees Paid

Many dealer Buyer's Orders and RISCs contain a provision indicating any customer dispute will be subject to arbitration. The thought behind including this disputed arbitration wording revolves around the belief that it is faster and cheaper to handle customer disputes through arbitration than getting bogged down in the court system and its slower moving process. Many Buyer's Order forms provide for the arbitration of disputes in boiler plate wording on the back of a Buyer's Order, or deep in the disclosure terms of a multi-section RISC. For example, in some of this arbitration process wording used by the form drafter/provider, the wording could reference that the arbitration is to be conducted under the American Arbitration Association's ("AAA") rules, processes and procedures. However, having this specific use of AAA listing in the form wording could add new expense and pre-approval activities to the arbitration process.

On September 1, 2014, AAA announced its new procedures regarding its Business Notification and Publicly-Accessible Consumer Clause Registry. The new procedure requires a business, such as a dealership, that uses the AAA process in a consumer contract to meet several procedural and financial requirements before the dealer can utilize the AAA process to arbitrate a dispute. A "consumer agreement" is defined by AAA as an

continued on back

agreement between a customer and business for a product or service for personal or household use, where the business has standardized application of arbitration clauses with customers, and where the terms and conditions of the purchase are primarily non-negotiable. Most dealers' Buyer's Orders and RISC agreements fall into this type of consumer agreement category.

Additionally, at the same time, AAA created a registry of businesses, which submitted their arbitration clauses to the AAA, and that AAA has determined substantially and materially comply with the standards of AAA's new consumer arbitration procedures and protocol. The intent of the registry is to provide a searchable database of a business's name, address, its consumer arbitration clause, and other related documents, for a consumer to determine if AAA has reviewed a consumer arbitration clause and will administer an arbitration.

New Fees Assessed by AAA for Review and Registering

However, AAA's new change does not come cheap. Each submission requires a nonrefundable fee of $500, which is due when a business, such as a dealer, submits a contract's arbitration clause to AAA to review for compliance, and to maintain the clause on the registry in the 2015 calendar year. Then an annual fee of $500 will be charged to maintain a previously approved and included clause in the registry. If after review, AAA determines there is a protocol violation, the business will have an opportunity to revise the clause, but such a revision does not require any additional fee. Also, where the AAA process is invoked, but the business failed to register the clause, AAA will still administer the arbitration, but the business must pay a $250 expedited review fee in addition to the standard $500 fee. AAA will refuse to administer a consumer arbitration where the business fails to pay either fees due.

Registering an Arbitration Clause in a Form Agreement

As noted above, many dealers use arbitration clauses in standardized forms. For example, many finance companies use the same RISC. To the extent the form clause will apply to any customer transaction, each dealership must register the provision with AAA, even if the form provider already had the arbitration provision approved by AAA. A dealer will need to identify which contract contains a dispute resolution provision designating the AAA process. If different arbitration wording exists in various agreements, consider using one arbitration wording version to streamline the registration process and reduce costs. Also note (either in the cover sheet to the clause or on the clause itself) to which contracts the clause applies. If registered in this manner, only one fee and registration would be required.

Review of AAA Wording in Clause Recommended

Historically, some dealers have noted dissatisfaction with the AAA process. The primary concern has been the perceived excessive cost versus other arbitration services. These new changes do not make the AAA process any less costly. A dealer must individually determine whether to register a AAA arbitration clause. Even if the review and revision of an arbitration clause in a Buyer's Order, RISC or other contracts results in a selection of a different arbitration provider, including referencing a generic, or state or local arbitration offerings, the use of such an arbitration clause can help to ensure the process is fair and quicker to resolve an issue between a dealer and a customer. ■

Peter K. Bauer practices in the Automotive Dealership Law group.
pbauer@mwn.com / 717. 237.5460

BUSINESS PRIVILEGE TAXES PAID ON LEASES REFUND/APPEAL FILING NEEDED BY MARCH/APRIL 2015

By Randy L. Varner

On September 19, 2014, the Pennsylvania Commonwealth Court in *Fish, Hrabrick and Briskin v. Township of Lower Merion*, No. 1940 C.D. 2013, held that lease receipts are not taxable under local business privilege tax ordinances. The Court held that the Local Tax Enabling Act, the statute that allows localities to impose business privilege taxes, forbids taxation of leases or lease transactions. In doing so, the Court rejected the township's argument that its tax was really a tax on the privilege of doing business, not on specific lease receipts. The township has filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court. Until the Supreme Court decides whether to hear the appeal, those businesses (except in the city of Philadelphia) that have included lease receipts in the tax base should file protective refund appeals for all expiring periods (generally the statute of limitations is three years). If the Supreme Court declines to hear the appeal, then refund appeals should be filed for all open periods.

As most business privilege taxes returns are due either in March or April each year, for dealers that are subject to the payment of business privilege taxes, dealers should mark their calendars to note a potential filing of an appeal of business privilege taxes for the first quarter of 2015. For example, dealers should note the target date for filing leases or lease transactions refund claims for the 2011 year would be either March or April of 2015.

Randy L. Varner practices in the State and Local Tax group.
rvarner@mwn.com / 717.237.5464