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DEALER TAX WATCH

A Quarterly Update of Essential Tax Information

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DEALER TAX WATCH *OUT*

If you had called me personally to ask, "What's happening lately with IRS audits of dealers and dealerships that I need to know about?" ... Here's what I'd say:

#1. CASH TRANSACTION REPORTING & FORM 8300 FILING RESPONSIBILITIES. The focus of this issue of the *DTW* is on cash transaction reporting and Form 8300 filing responsibilities. This focus is timely for a few reasons. ***First***, at every conference and seminar, representatives of the IRS and CPA speakers continue to emphasize the importance of this subject. ***Second***, the recent *Tysinger* case, discussed below, provides many lessons that are worth (re)examining while shining a bright spotlight on penalty provisions that apply when Forms 8300 are not filed.

Third, as a speaker on this subject at the May conference of the National Alliance of Buy-Here, Pay-Here Dealers, it became very apparent to me that the responsibilities that buy-here, pay-here dealers have for cash reporting and Form 8300 filing are significantly underemphasized and less than fully understood by many.

Our coverage of this topic includes a closer look at four critical Code Sections ... 6050I, 6721, 6722 and 6724. In addition, as discussed below, we've analyzed the *Tysinger* case and reviewed what we believe are several significant problem areas in cash reporting for buy-here, pay-here dealers.

#2. DEALERSHIP WIGGLES OUT OF FORM 8300 PENALTIES ... *TYSINGER MOTOR CO. v. U.S.* In the recent case of Tysinger Motor Company Inc., the dealership, over the course of two years, sold more than 3,000 vehicles. However, in the midst of all of this activity, it failed to file Forms 8300 in four of eight reportable transaction situations.

These failures occurred despite Tysinger's efforts to design and implement a system that would ensure the filing of Forms 8300 whenever they were required. Ironically, the system that had been set up to prevent overlooking Form 8300 filings had been developed as a result of failures found in prior IRS compliance audits in this regard.

Three strikes and you're out ... Or, maybe you're not. The IRS assessed the highest penalties possible against Tysinger for its third-time-around behavior. The IRS said that Tysinger had "intentionally disregarded" the requirements for filing Forms 8300. Penalties assessed ... $105,000. Penalties paid ... $105,000. Tysinger's claim for refund ... $100,000. Refund awarded to Tysinger by District Court ... $100,000. Read all about it starting on page 10.

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The IRS recently announced that it has decided not to appeal the decision of the District Court. Case closed.

#3. ARE BUY-HERE, PAY-HERE (BHPH) DEALERS AT RISK IN CASH TRANSACTION REPORTING ACTIVITIES? ... SOME FORM 8300 FILING QUESTIONS NEEDING ANSWERS. From our look at the *Tysinger* case and the related penalty provisions, one might conclude that the rules and interpretations for filing Forms 8300 are fairly well-defined and understood by franchised new car dealers. The matter of compliance typically comes down to a matter of performance.

However, it strikes us that buy-here, pay-here dealers are in a far more precarious position in this regard.

Generally speaking, the BHPH dealer "industry" is not yet as sophisticated or mature as the franchised new car dealer industry. This is not a criticism; it is merely a fact. Also, the nature of the BHPH business is far different, and it results in several very common fact patterns for which it appears the IRS has provided little or no clarification or guidance.

In analyzing the cash reporting rules for franchise new car dealers, much of the emphasis is placed on customer down payments and on initial financing that customers secure in the form of "certain monetary instruments" other than cash which may be treated as cash for purposes of the cash reporting requirements. This emphasis on the front-end stages of the purchase transaction requires attention to many special rules, definitions and exceptions that are more likely to be encountered by the new car dealer, than by the BHPH dealer.

The reason for this is simple ... the BHPH business (on the other hand) thrives mostly on cash payments. Pure, hard cash payments ... made by severely credit-challenged customers ... not on "certain monetary instruments," etc., etc.

Here's the point. When one connects (1) the sale of the vehicle by the BHPH dealer with (2) the underlying financing/note which the dealer holds (because that's where he really makes the dough), one becomes involved with relatively simple rules requiring accounting for cash receipts over ***any consecutive 12-month period***. These realities are almost too painful to confront.

Many BHPH dealers fall below the radar screen because they are involved with transactions that will not aggregate to the receipt of more than $10,000 over the life of the vehicle and its financing. However, the spectrum of dealer size and transaction activity levels is such that, in the upper part of the range, many BHPH dealers are likely to have significant cash reporting responsibilities ... of which they might not be fully aware.

Beginning on page 22, you'll find our discussion of various BHPH fact patterns, including related finance company issues, which could create unexpected cash reporting problems. We've also included a summary of key terms and regulations on pages 24-25.

Naturally, one tries to read the Regulations looking for "loopholes" or shortcomings in the language that would support conclusions that Form 8300 reporting is not required. We would emphatically caution against straining too far in this direction. Congress intended that the cash reporting requirements were to be interpreted broadly, rather than narrowly ... even if business compliance with these rules creates significant hardships.

If our concerns are warranted, it may be appropriate for the BHPH community to consider requesting clarification on a number of questions from the IRS, perhaps through the medium of the Industry Issue Resolution (IIR) program. For more on this, see pages 30-31.

#4. BHPH CONFERENCE. The 2006 National Conference for Buy-Here, Pay-Here Dealers was held in Las Vegas, May 8-10. This Conference continues to be excellent ... It is the equivalent of "Woodstock for BHPH Dealers," attracting BHPH dealers of all size from all over the country.

This year's NABD Conference was attended by about 1,600 dealers, and almost every conceivable topic of interest to BHPH dealers received attention. Incidentally, I noticed representatives from only 3 other CPA firms as attendees or participants at this Conference.

There were numerous technical presentations in the four primary areas of capital, collections, technology and regulatory/legal compliance. Valuable NABD benchmark information comparing 2005 with 2004 was provided to all attendees and the dealer panels alone were worth the price of admission.

This year's Conference added several vendor presentations in which attendees could hear directly from vendors about how their specific products served specific BHPH needs. One of the presentations that I heard was "Analytic Tools to Build a Better Portfolio." This presentation was a discussion of the importance of static pool analysis as a factor in evaluating the quality of a BHPH dealer's note portfolio when he/she is seeking financing. This analysis is also critical to provide any dealer with a better understanding of his/her anticipated cash flow. I attended several other vendor presentations, but this one stood out from all →

of the rest for its informative content. You can access many of the speakers presentations by going to the NABD web site (www.bhphinfo.com).

#5. BHPH TAX ISSUES ... NEW RESOURCE AVAILABLE. *IRS Audit Issues, Rulings & Tax Cases of Special Interest to Buy-Here, Pay-Here Dealers"* is a compilation of selected articles, analyses, checklists and other materials that have appeared in the *Dealer Tax Watch* from June 1994 through December 2005.

This 188-page compilation is available for $159.

You can review the Table of Contents on our web site (www.defilipps.com) to see the depth and variety of technical information included in this resource for BHPH dealers and for their advisors. An order form can be downloaded from our web site, or simply call us for more information.

#6. POSSIBLE LIFO REPEAL DISCUSSED BY SENATE. In June, the Senate Finance Committee held hearings which included preliminary discussion about the possibility of repealing the use of the Last-In, First-Out (LIFO) Inventory Valuation Method for all businesses. Additional hearings on this will be held later. Our sister publication, the *LIFO Lookout*, follows this development closely.

#7. ACCOUNTABLE PLANS ... TAX COURT RULING AGAINST NAMYST UPHELD. For many auto dealerships, tool reimbursement programs for service technicians "as we knew them" now seem to be a thing of the past. In the September 2005 *DTW*, we analyzed Revenue Ruling 2005-52 and concluded that obviously flawed plans had no chance to stand up to strict enforcement by the IRS of the requirement that employees must return amounts received in excess of actual expenses.

The focus of the June 2005 issue of the *DTW* was on technician tool reimbursement programs. In discussing the many court cases and rulings, one that we discussed was *Namyst v. Comm.* In this case, the Tax Court held that the "plan" Mr. Namyst was involved with did not satisfy the requirements of Section 62(c).

Recently, the Tax Court's decision was upheld by the District Court. For more on this, see page 4.

#8. THE IRS IS STILL LOOKING FOR "LISTED TRANSACTIONS." In recent discussions with CPAs over the summer at various meetings, it appears the IRS has somewhat increased its level of audit activity in automobile dealerships.

In this regard, it is interesting to note that apparently, it has become standard practice for the IRS to find out whether a dealer/dealership has participated in any listed transactions.

We're not talking specifically about PORCs, here. We're talking about the whole spectrum of listed transactions. In glancing over the IDR (Information Document Request) that the IRS uses in this regard, we did notice a few transactions or situations that aren't beyond the realm of possibility for a dealer to become involved with as part of his/her overall strategic planning.

For your information, we've printed one of these IDRs on pages 6-9.

#9. "ABUSIVE" REINSURERS. On the specific subject of PORCs, we understand that Terri Harris, the IRS Motor Vehicle Technical Advisor, spoke at the May meeting of the Consumer Credit Insurance Association. At this meeting, she said again that the IRS' position is that not all producer-affiliated reinsurance companies are bad.

However, Ms. Harris stated that the IRS has an emerging or new theory which it is now applying to try to ferret out "abusive" reinsurers. This involves the IRS applying a "transfer pricing analysis" to judge whether the reinsurance transaction under examination was conducted at arm's length.

We have heard that the IRS began to use this theory and other approaches to question Section 501(c)(15) and Section 831(b) reinsurers. Following a finding that a reinsurer was not an insurance company, the taxpayer's Section 953(d) election was deemed to be invalid, and from this, the consequence was that the reinsurer was deemed to be a controlled foreign corporation. All this leads to the recalculation of higher taxes due. And penalties are apparently being assessed, with particularly adverse penalties for those taxpayers who did not obtain determination letters from the IRS.

#10. SECTION 199 UPDATE ... LITTLE PRACTICAL BENEFIT FOR DEALERSHIPS. In the past, we've discussed the possibility that Section 199, one of the newer business tax incentive provisions, might be of benefit to some dealerships. The possible applicability of the Domestic Production Activities Deduction is discussed on page 12 of the December issue of the *DTW*. That discussion suggested only a faint glimmer of hope.

Recently, it has come to our attention that the position of the Service is that if a taxpayer seeks the benefits under Section 199 as a producer, that taxpayer would also, for purposes of Section 263A, have to be treated as a producer. This "consistency of treatment under both Sections" would pretty much eliminate all possibility of any benefit for the typical auto dealership.

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Sec. 62(c)	**NAMYST IN THE TAX COURTS** **Accountable Plan Rules Require Repayment of Excess Amounts Received**
Summary	• In our extensive Update coverage of technician tool rental programs under Section 62(c) last year (see June 2005 *Dealer Tax Watch*, pages 4-48), *Namyst* was one of the cases we discussed. • The issue in this case relevant to accountable plans was whether or not payments Mr. Namyst received were protected by Section 62(c) from inclusion in his income. • Namyst had received significant payments which he omitted from income on the basis of his belief that these amounts were received as payments from his employer under an accountable plan.
Four Issues in the Namyst Case & Tax Court's Holdings	• ***First***... Were amounts received by Namyst excludable from his income because they were received under a Section 62(c) accountable plan ... ***No, the payments Mr. Namyst received were includable in his gross income.*** • ***Second***... Were the amounts received by Namyst for the sale of his tools includable in his gross income? ... ***Yes, the amounts he received for the sale of tools were includable in gross income.*** • ***Third***... Did the 6-year statute of limitations under Section 6501 apply? ... ***Yes, the 6-year statute applied because the amounts not reported were large enough to trigger the 25% limitation that extended the statute of limitations from 3 to 6 years.*** • ***Fourth***... Was Namyst subject to accuracy-related penalties under Section 6662? ... ***No, the accuracy-related penalties did not apply.***
In the Tax Court ***The Fatal Flaw...*** ***Namyst Did Not Return Excess Payments***	• The Tax Court set out the three requirements (business connection, substantiation and return of excess) and it observed that these requirements are to be applied on an employee-by-employee basis. ◆ And therefore, the failure of one employee to substantiate his expenses would not cause reimbursements to other employees to be treated as made under a nonaccountable plan. • The substantiation rules for business expense deductions under Sections 162 and 274(d) are incorporated by Reg. Sec. 1.62-2(e)(1) through (3), for the purpose of determining whether a reimbursement arrangement constitutes an accountable plan. ◆ The Court agreed that the taxpayer's lists constituted proper substantiation under Sec. 162, and they were sufficiently detailed to qualify as proper substantiation under the requirements of Sec. 274(d), where applicable. (Note: Namyst had detailed lists of expenses incurred and tools purchased.) • The fatal flaw for Namyst was that "***There is no evidence that petitioner was required to return any amounts he received that exceeded his expenses.***" ◆ "Although petitioner (Namyst) was required to substantiate expenses, the annual reimbursement amounts exceeded petitioner's expenses. ***If the excess amounts were meant to be advances for anticipated expenses petitioner would make, there is no evidence that the advances were calculated to approximate the amounts of the anticipated expenditures.*** ◆ "The record does not show whether petitioner (Namyst) did in fact return any of the excess amounts to his employer. ◆ "Based on all the facts available to us, we do not believe that the arrangement between petitioner and (his employer) required petitioner to return excess amounts to (his employer). ◆ "Therefore, the arrangement did not satisfy the returning amounts in excess of expenses requirement of Reg. Sec. 1.62-2(f)." • Although the Tax Court gave Mr. Namyst credit for having sold his tools to his employer, it was unwilling to accept any assumptions regarding cost basis in those tools which might be applied against the sales proceeds to reduce the gain on the sale (even though Mr. Namyst had detailed lists and photographs).
Eighth Circuit Court of Appeals	• Affirmed Tax Court holding that payments to Namyst were not made under an accountable plan. • Appeals Court only looked at the matter of whether Mr. Namyst returned money that he received in excess of his substantiated expenses to his employer. • The employer had paid Namyst by check in whole dollar amounts, and no evidence was presented to show whether the payments to Mr. Namyst correlated with the expenses submitted by him. • Because the employer did not differentiate between payments to Mr. Namyst for (1) expenses reimbursed and (2) payments on his tools, the Court said, ◆ "It is difficult, if not impossible, to determine which payments covered which debts. ◆ "Additionally, the record evidences overpayments, and Mr. Namyst did not calculate the overpayments or return (to his employer) any additional money received. ... ◆ "Because Mr. Namyst cannot show substantiated expenses covering the entire amount he received, the findings of the Tax Court are not clearly erroneous."

Sec. 62(c)	NAMYST IN THE TAX COURTS Accountable Plan Rules Require Repayment of Excess Amounts Received Page 2 of 2
No Credit for "Partial Compliance"	• One of Mr. Namyst's contentions was that his substantiated payments should be treated as payments under an accountable plan, while unsubstantiated payments should be treated as payments under a nonaccountable plan. • The Court of Appeals said that the treatment Mr. Namyst was advocating would effectively eliminate the third prong of the accountable plan test and allow all substantiated expenses to be deducted from a calculation of adjusted gross income. • The Court held that because the plan ***as a whole*** did not meet the requirements of an accountable plan, ***all*** of the payments (Mr. Namyst) received pursuant to this nonaccountable plan should be treated as ordinary income.
Tools Sold Had a "Zero" Basis	• The Court of Appeals also affirmed the Tax Court holding that the entire amount paid by the employer to Mr. Namyst for his tools was a return of capital with a zero cost basis. ◆ The tools were properly treated as long-term capital assets subject to capital gains tax. ◆ The amount of gain on the sale is the difference between the amount realized and the cost basis, adjusted for depreciation. ◆ Depreciation is deducted from an asset's basis, even if the taxpayer fails to take advantage of such deductions throughout the years (i.e., the "allowed" or "allowable" rule). ◆ Because Mr. Namyst presented no proof as to the cost of tools, he failed to establish any basis in the assets ... and, the Court would not permit the use of an "informed estimate" in this regard. ◆ Therefore, Mr. Namyst's tools had a zero cash (i.e., adjusted tax) basis, and the entire amount received for the tools should be treated as capital gain income.
Citations	• *Steven J. and Terry L. Namyst v. Comm.*, T.C. Memo 2004-263 (November 17, 2004) • United States Court of Appeals for the Eighth Circuit, Docked No. 05-1760 (January 27, 2006)

Dealer Tax Watch Out

(Continued from page 3)

#11. THE NEW TAX ACT: *TIPRA* ... WHAT'S IN IT FOR DEALERS? On May 17, 2006, President Bush signed the *Tax Increase Prevention & Reconciliation Act of 2006* ... *TIPRA* for short. What's in it for dealers? Nothing special ... or not a lot.

About the only thing remotely beneficial might be a provision that would allow dealers (as well as any other individuals) to convert their IRAs to Roths by removing the $100,000 income eligibility requirement or limitation. But, this favorable provision isn't scheduled to become effective for a few years. So, don't hold your breath waiting for this.

If you've seen anything else tip-toeing around in *TIPRA* that we've haven't, we'd sure like to know about it.

#12. CADCA SHOULD HAVE BEEN ADDED TO LIST OF DEALER CPA ASSOCIATIONS. In our last issue of the *DTW* on page 17, we included the names of 5 Dealer-CPA Associations and their member firms.

Due to an oversight, that list omitted a 6th association, CADCA. CADCA stands for CPA Auto Dealer Consultants Association, which includes member firms in 15 or so states. For more information on this association and its member firms, please visit www.autodealercpas.net.

I am embarrassed by my oversight on this and thank Rex Collins, the President of CADCA, for calling my attention to it. Also, my apologies to CADCA and to its member firms for this oversight.

IRS Tax Shelter IDR	***Department of the Treasury - Internal Revenue Service*** ***Form 4564 - Information Document Request (Attachment)*** ***Mandatory Tax Shelter IDR*** *Page 1 of 4*
	To: ***XYZ Dealership*** Request Number: IDR 2 Subject: ***Listed Transactions*** (Revision date 2/14/2005) Date of Request: June 1, 2006 Response Date: June 19, 2006 Description of Documents Requested: See below
Purpose & Scope	• The Internal Revenue Service has identified certain transaction as "listed transactions" for purposes of Reg. Sec. 1.6011-4(b)(2). • The IRS considers transactions that are the same as, or substantially similar to, listed transactions to be ***tax avoidance transactions***. • Provided below, is a summary of the listed transactions as of the date of this IDR. • The purpose of this IDR is to determine whether ***XYZ Dealership*** has directly or indirectly participated in transactions that are the same as, or substantially similar to, any listed transaction. • Please list each transaction that is the same as, or is substantially similar to, a listed transaction in which ***XYZ Dealership*** directly or indirectly participated, and that affects ***XYZ Dealership's*** Federal income tax liability for any year under examination. • The rules of Reg. Sec. 1.6011-4 apply to determine whether a taxpayer has directly or indirectly participated in a transaction, and whether a transaction is the same as, or substantially similar to, a listed transaction.
Broad Definition of "Participation"	• A taxpayer has ***participated*** in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under Reg. Sec. 1.6011-4(b)(2). • A taxpayer has also participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy, described in published guidance that lists a transaction under Reg. Sec. 1.6011-4(b)(2). • Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction (Reg. Sec. 1.6011-4(c)(3)(i)(A)).
"Substantially Similar" Transactions	• The term ***substantially similar*** includes any transaction that is expected to obtain the same or similar tax consequences and that is either factually similar or based on the same or similar tax strategy. • Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as, or substantially similar to, another transaction. • Further, the term ***substantially similar*** must be broadly construed in favor of disclosure (Reg. Sec. 1.6011-4(c)(4)).
Information to be Provided	• See facing page. (Page 2 of 4)
Definitions & Other Instructions	• ***XYZ Dealership*** means all ◆ Entities that form a part of the consolidated group, and ◆ Entities over which ***XYZ Dealership*** exercises legal or effective control. • Provide full and complete documents. ◆ Also provide non-identical copies of all items requested in this IDR. ◆ Please note and explain any deviation or difference between the original and the copy. • This request applies to the tax year ending December 31, 2004.
See summary of Listed Transactions on pages 3 & 4	

IRS Tax Shelter IDR	***Department of the Treasury - Internal Revenue Service*** ***Form 4564 - Information Document Request (Attachment)*** ***Mandatory Tax Shelter IDR*** *Page 2 of 4*

For each transaction identified (as a listed transaction in which the taxpayer participated), please provide the following items.

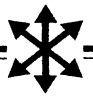
1. A description of the transaction, including all material facts.
2. A description of ***XYZ Dealership's*** tax treatment of the transaction, including tax benefits claimed on the return.
   - In describing the tax treatment, please include all tax rules or mechanics that affect, give rise to, or result in, the claimed tax benefits.
3. Information identifying the amounts involved and the General Ledger accounts affected by any part of the transaction.
   - Please also trace all identified items and amounts as line items on the tax returns.
4. All contracts and other transactional documents, including agreements, instruments, and schedules.
   - If such information is too voluminous, then, in the alternative, provide an index that lists and describes all such contracts and transactional documents.
5. Complete copies of all documents and other materials, including legal opinions and memoranda, provided by any party that promoted, solicited or recommended ***XYZ Dealership's*** participation in the transaction.
6. All internal documents used by ***XYZ Dealership*** in its decision-making process.
   - Include, if applicable, information presented to ***XYZ Dealership's*** Board of Directors, Audit and Finance Committee, and any other committee.
7. Complete and un-redacted minutes of the Board of Directors, Audit and Finance Committee, and any other committee(s) that related, directly or indirectly, to the transaction.
8. All legal, accounting, financial and economic opinions and memoranda secured by or on behalf of ***XYZ Dealership*** in connection with the transaction.
9. A list of all participants and their roles in the transaction.
10. The names and addresses of all parties who promoted, solicited or recommended ***XYZ Dealership's*** participation in the transaction and to whom ***XYZ Dealership*** paid fees or other compensation in connection with ***XYZ Dealership's*** decision to participate in the transaction.
11. The name(s) and job titles of officers and other employees of ***XYZ Dealership*** familiar with the transaction and who are available to meet with the audit team within 2 weeks of the date of this IDR.
12. For each document withheld because of a claim of privilege, please provide the following:
    - The name and title of the author,
    - The date of the document,
    - The names, titles and addresses of all recipients of the documents,
    - The subject matter of the document,
    - The privilege claimed,
    - The portions of the document for which there is no claim of privilege, and
    - For any opinion or memoranda described in item 8 above, the conclusions reached in the opinion or memorandum.

Attached to this IDR is a summary of Listed Transactions, based substantially on Notice 2004-67. This summary of Listed Transactions is further summarized on pages 3 & 4.

Listed Transactions

Department of the Treasury - Internal Revenue Service
Form 4564 - Information Document Request (Attachment)
Mandatory Tax Shelter IDR

#	*Description*	*Citation*
1	Transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of the taxable year.	Rev. Rul. 90-105, 1990-2 C.B. 69
2	Certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of IRC Sections 419 and 419A.	Notice 95-34, 1995-1 C.B. 309
3	Transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner.	Litigated cases are cited
4	Transactions involving certain distributions from charitable remainder trusts.	Reg. Sec. 1.643(a)-8
5	Transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered.	Notice 99-59, 1999-2 C.B. 761
6	Transactions involving fast-pay arrangements.	Reg. Sec. 1.7701(1)-3(b)
7	Certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions.	Rev. Rul. 2000-12, 2000-1 C.B. 744
8	Transactions generating losses resulting from artificially inflating the basis of partnership interests.	Notice 2000-44, 2000-2 C.B. 255
9	Transactions involving the purchase of a parent corporation's stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent's employees, and the eventual liquidation or sale of the subsidiary.	Notice 2000-60, 2000-2 C.B. 568
10	Transactions purporting to apply IRC Section 935 to Guamanian trusts.	Notice 2000-61, 2000-2 C.B. 569
11	Transactions involving the use of an intermediary to sell the assets of a corporation.	Notice 2001-16, 2001-1 C.B. 730
12	Transactions involving a loss on the sale of stock acquired in a purported IRC Section 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor has not yet taken into account for Federal income tax purposes.	Notice 2001-17, 2001-1 C.B. 730
13	Certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer.	Notice 2001-45, 2001-2 C.B. 129
14	Transactions involving the use of a loan assumption agreement to inflate basis in assets acquired from another party to claim losses.	Notice 2002-21, 2002-1 C.B. 730
15	Transactions involving the use of a notional principal contract to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future.	Notice 2002-35, 2002-1 C.B. 992
16	• Transactions involving the use of a straddle, a tiered partnership structure, a transitory partner, and the absence of a IRC Section 754 election to claim a permanent non-economic loss. • Transactions involving the use of a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting gain ("substantially similar"). • Transactions involving the use of economically offsetting positions, one or more tax indifferent parties, and the common trust fund accounting rules of IRC Section 584 to allow a taxpayer to claim a non-economic loss ("substantially similar").	Notice 2002-50, 2002-2 C.B. 98



Listed Transactions	Department of the Treasury - Internal Revenue Service Form 4564 - Information Document Request (Attachment) Mandatory Tax Shelter IDR Page 4 of 4	
17	*"Lease-in/Lease-out" or "LILO" transactions.* Transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor.	Rev. Rul. 2002-69, 2002-2 C.B. 760
18	Certain arrangements involving the transfer of employee stock ownership plans (ESOPs) that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of IRC Section 409(p).	Rev. Rul. 2003-6, 2003-1 C.B. 286
19	Certain arrangements involving leasing companies that have been used to avoid or evade Federal income and employment taxes.	Notice 2003-22, 2003-1 C.B. 851
20	Certain arrangements that purportedly qualify as collectively-bargained welfare benefit funds excepted from the account limits of Sections 419 & 419A.	Notice 2003-24, 2003-1 C.B. 853
21	Transactions involving compensatory stock options and related persons to avoid or evade Federal income and employment taxes.	Notice 2003-47, 2003-30 I.R.B. 132
22	*"Lease Strips."* Transactions in which one participant claims to realize rental or other income from property or service contracts and another participant claims the deductions related to that income.	Notice 2003-55, 2003-34 I.R.B. 395
23	Certain transactions that use contested liability trusts improperly to accelerate deductions for contested liabilities under IRC Section 461(f).	Notice 2003-77, 2003-49 I.R.B. 1182
24	Certain transactions in which a taxpayer claims a loss upon the assignment of a IRC Section 1256 contract to a charity but fails to report the recognition of gain when the taxpayer's obligation under an offsetting non-Section 1256 contract terminates.	Notice 2003-81, 2003-51 I.R.B. 1223
25	Certain transactions designed to avoid the limitations on contributions to Roth IRAs described in IRC Section 408A.	Notice 2004-8, 2004-4 I.R.B. 333
26	Transactions that involve segregating the business profits of an ESOP-owned S corporation in a Qualified Subchapter S Subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP.	Rev. Rul. 2004-4, 2004-6 I.R.B. 414
27	Certain arrangements in which an employer deducts contributions to a qualified pension plan for premiums on life insurance contracts that provide for death benefits in excess of the participant's death benefit, where under the terms of the plan, the balance of the death benefit proceeds revert to the plan as a return on investment.	Rev. Rul. 2004-20, 2004-10 I.R.B. 546
28	*Foreign Tax Credit Intermediary* ... Transactions in which, pursuant to a prearranged plan, a domestic corporation purports to acquire stock in a foreign target corporation and to make an election under IRC Section 338 before selling all, or substantially all, of the target corporation's assets in a preplanned transaction that generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes).	Notice 2004-20, 2004-11 I.R.B. 608
29	Transactions in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization while retaining the economic benefits associated with that stock.	Notice 2004-30, 2004-17 I.R.B. 828
30	*Inter-company Financing Using Guaranteed Payments* ... Transactions in which corporations claim inappropriate deductions for payments made through a partnership.	Notice 2004-31, 2004-17 I.R.B. 830
31	Transactions in which a taxpayer enters into a purported sale-leaseback arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person's payment obligations are economically defeased and the taxpayer's risk of loss from a decline, and opportunity for profit from an increase in the value, of the leased property are limited.	Notice 2005-13, 2005-9 I.R.B. 1

The above is an edited and summarized version of the attachment to the IRS IDR regarding Listed Transactions. Certain Code and Regulation Section references and other case citations have been omitted from this summary.

DEALERSHIP ESCAPES MAJOR PENALTY FOR NOT FILING FORMS 8300

TYSINGER MOTOR CO. v. U.S.

CASH REPORTING FORMs 8300

Generally, the failure to file an informational return, such as Form 8300, will subject the negligent party to a penalty of $50 for each return that should have been, but was not, filed. This $50 per return non-filing penalty can increase up to a maximum of $250,000 per calendar year.

But, it can get far worse. If the IRS deems the failure to file by the responsible party to result from an "intentional disregard" of the filing requirements, the IRS may further increase the penalties assessed up to the greater of (1) $25,000 per return not filed or (2) the amount of cash received in the transaction, up to $100,000 per transaction. These penalties can be (financially) staggering.

Dealers and CPAs are continually reminded of the Form 8300 filing requirements. However, no matter how cautious a dealer might be in this regard or how thorough his/her compliance procedures might be, there is always the possibility that a transaction (or two, or more) will fall through the cracks.

In the recent case of Tysinger Motor Company Inc. (Tysinger), the dealership failed to file Forms 8300 in four of eight reportable transaction situations. This occurred despite Tysinger's efforts to design and implement a system that would ensure the filings of Forms 8300 whenever such filings were required. And, ironically, the system that had been designed to prevent these oversights had been developed as a result of prior audits by the IRS to specifically check for compliance with these requirements.

This time around, because of the dealership's prior history in Form 8300 audits, the IRS assessed Tysinger a penalty of $25,000 per transaction for each of the four Forms 8300 that Tysinger had failed to file. After failing to persuade the IRS auditors that these penalties should not be assessed, Tysinger paid the penalties and then sued the IRS for a refund.

Tysinger's suit for refund was decided by the U.S. District Court for the Eastern District of Virginia on April 7, 2006. This Court found that Tysinger did not intentionally disregard its filing obligations to file these Forms 8300. Accordingly, it reversed the assessment of higher penalties by the IRS.

THE PENALTY LABYRINTH

There are three Code Sections involving penalties for non-filing of Forms 8300. Section 6721(a) invokes routine penalties when non-filing occurs. If the non-filing of Forms 8300 is due to intentional disregard, Section 6721(e) invokes significantly greater monetary penalties than those more routinely invoked under Section 6721(a).

Section 6722 contains the penalties for failure to furnish written statements to the customers telling them that Forms 8300 have been filed in connection with their transactions. This Section, like Section 6721, contains a provision invoking routine $50 penalties for each failure ... up to a maximum of $100,000. But, if the failures are due to intentional disregard, the penalties can increase significantly. (Apparently, this was the penalty that Tysinger paid, but did not contest.)

Finally ... the possibility for relief. Section 6724 will allow a taxpayer to avoid penalties for non-filing Forms 8300 if the taxpayer can show that its failure to report the cash transactions was due to reasonable cause, and was not due to willful neglect. In *Tysinger*, the District Court said that it did not have to analyze this Code Section because Tysinger had sustained its burden of proof under Section 6721.

For more on these Code Sections, see pages 17-21.

FACTS IN *TYSINGER*

The Tysinger dealership, located in Hampton, Virginia, had been on the IRS' radar screen for the reporting of cash transactions for many years. This came about as part of the IRS' standard procedure to conduct Forms 8300 Compliance Reviews. See *"Three Audits"* and *"Four that Got Away"* on the facing page. Also, see *"Corrective Measures After Second IRS Audit"* on page 13.

Current IRS audit for 1999-2000. The third IRS audit to check compliance with these reporting requirements focused on the years 1999 and 2000.

During these years, out of more than 3,000 vehicles sold by the dealership, eight customer deals involved cash down payments of $10,000 or more. The Chief Financial Officer of the dealership, Mr. Zimmerman, personally filed Forms 8300 for four of the eight reportable transactions. The other four transactions were not reported on Forms 8300 to the IRS. These non-filings occurred because the F&I Managers responsible for these sales did not properly bring all of the particulars of the transactions to Mr. Zimmerman's attention.

In each of the four unreported transactions, there was no evidence of involvement with money launder-

see **TYSINGER MOTOR CO. V. U.S.,** page 12

Three Compliance Audits	***Tysinger & the IRS*** ***The Four That Got Away & How They Were Missed***	
Audit Year	**Tax Year(s)**	**Findings**
1992	*1990-1991*	• Tysinger did not report several transactions involving cash in excess of $10,000.
1996	*1996*	• Tysinger did not report several transactions involving cash in excess of $10,000. • IRS assessed nominal penalties against the dealership. • ***"Acknowledgement of Requirement to File Form 8300."*** In concluding its Compliance Audit for 1996, the IRS required the dealer (Mr. Tysinger) and the dealership's Chief Financial Officer (Mr. Zimmerman) to sign an "Acknowledgment" which contained, in part, the following ... ◆ "I have been advised that any receipt of currency exceeding $10,000, whether in one installment or multiple installments by or on behalf of the same person, should be reported to the Internal Revenue Service, by using Form 8300, by the 15th day after the date of the transaction. ... ◆ "I have also been advised that civil and criminal penalties may be imposed for failure to file a report or to supply information, structuring transactions, and for filing a false or fraudulent report." ◆ Note: Apparently, it is a common (or possibly, not an unusual) practice of the IRS to require Officers to sign Acknowledgments like the one described in *Tysinger* ... in this regard, see LTR/TAM 200501016. • ***Corrective measures undertaken by the dealership.*** ◆ Implementation of system for determining (and assuring) cash reporting and filing responsibilities and other measures. ◆ The "Zimmerman System" - see the description of procedures on page 13.
~	*1997-1998*	• No IRS audit or compliance review for these years.
~	*1999-2000*	• Out of 3,000 vehicles sold, eight (8) deals involved reportable cash transactions. ◆ Four (4) deals - Forms 8300 were filed with the IRS. ◆ Four (4) deals - Forms 8300 were ***not*** filed.

The Four That Got Away & How They Were Missed	
Customer #1	• ***Facts ...*** ◆ On Jan. 28, 1999, ***Customer #1*** placed a cash down payment of $14,050 on a vehicle that cost $46,050. ◆ He obtained a loan for the balance owed. • ***System Failure ...*** ◆ The F&I Managers responsible for the transaction did not complete the cash checklist as required by the Zimmerman system.
Customer #2	• ***Facts ...*** ◆ On Mar. 20, 2000, ***Customer #2*** placed a cash down payment of $10,615 on a vehicle that cost $41,615. ◆ He obtained a loan for the balance owed. • ***System Failure ...*** ◆ The F&I Manager responsible for the transaction did not complete the cash checklist as required. • However, an accountant in the main office had placed a handwritten note in the file that stated: ***"Please Fill Out a Form 8300."***
Customer #3	• ***Facts ...*** ◆ On April 7, 2000, ***Customer #3*** placed a cash down payment of $12,526 on a vehicle that cost $30,526. ◆ He obtained a loan for the balance owed. • ***System Failure ...*** ◆ The F&I Manager responsible for the transaction did not complete the cash checklist as required.
Customer #4	• ***Facts ...*** ◆ On June 23, 2000, ***Customer #4*** placed a cash down payment of $14,000 on a vehicle that cost $32,398. ◆ She obtained a loan for the balance owed. • ***System Failure ...*** ◆ The F&I Manager responsible for the transaction did not complete the cash checklist as required.

(Continued from page 10)

ing or any other illicit activity. There also was no evidence that any of these customers requested, nor did anyone at the Tysinger dealership promise, that the customers' cash down payments would not be reported to the IRS.

The Tysinger dealership personnel were forthcoming and provided the IRS Agent with all of the documents that she requested. Upon completion of her review, the Agent recommended the maximum penalty per failure to file ($25,000) for each of the four unreported transactions.

If the facts involving each unreported transaction had indicated cash down payments of more than $25,000 by any of the customers, the penalties assessed by the IRS for intentional disregard would have been even greater.

The IRS Agent recommended this penalty even though she never concluded that any member of the dealership's management had made a conscious decision to evade the cash reporting requirements. The Agent's recommendation for higher penalties was based on the three following facts:

First, the Tysinger dealership had past violations.

Second, Mark Tysinger (the dealer) and Mr. Zimmerman (the CFO) had previously acknowledged in writing to the IRS their awareness of the Form 8300 cash transaction reporting requirements.

Third, the "Zimmerman System" (i.e., the procedures in place intended to catch all situations requiring Form 8300 filing) did not work in the four instances discovered by the IRS Agent. The "Zimmerman System" had been implemented by the dealership after a previous IRS audit in order to avoid any future recurrence of missed Form 8300 filings.

The examining Agent's supervisors concurred in her recommendation and assessed the dealership $100,000 ($25,000 x 4) in penalties for failure to file the four Forms 8300. The IRS also assessed the dealership $5,214.93 in penalties for Tysinger's failure to ***notify*** the four customers that their cash down payments would be reported to the IRS.

After unsuccessful administrative appeals, Tysinger paid the penalties and filed its suit for refund of the $100,000 with the District Court. It did not contest the penalty ($5,214.93) for failure to notify its customers.

BURDEN OF PROOF IS ON THE TAXPAYER

The first question for the Court was ... Who had to bear the burden of proof? The Court held that Tysinger (the taxpayer) was required to bear the burden of proof in challenging a penalty that the IRS was assessing.

The IRS' assessment is presumed to be correct, so long as it is not arbitrary. The Court said that the shifting of the burden of proof from the taxpayer to the IRS was not applicable in Tysinger's case because this case did not involve the underpayment of tax. When a taxpayer challenges a ***penalty*** (as distinguished from a challenge to an ***underpayment of tax***), there is no "amount of tax actually owed" for the IRS to prove. Therefore, the taxpayer who challenges the penalty has to bear the burden of proof.

KEY ISSUE ... "INTENTIONAL DISREGARD"

The key issue, of course, was whether or not Tysinger had ***intentionally disregarded*** its obligations to file Forms 8300 in the four instances that came to the IRS' attention.

The statute does not contain a definition of the term "intentional disregard." Accordingly, subjective considerations (rather than the interpretation of hard and fast rules) enter into the determination of whether Tysinger's failure to file Forms 8300 was the result of "intentional disregard." These subjective considerations involve interpreting the generalizations and examples in the Regulations concerning various facts and circumstances.

The Court held that Tysinger did not intentionally disregard its filing responsibilities. See *"What the District Court Said"* on pages 14-15. The Court's holding made it unnecessary for it to have to analyze the provisions of another Section (6724) that taxpayers can try to use to avoid non-filing penalties if a taxpayer can show "reasonable cause" for non-filing.

CONCLUSION

A careful study of the *Tysinger* case illustrates many sound procedures and practices that dealers should consider implementing, if they have not already done so. *"A Few Lessons & Other Observations from the Tysinger Case"* are summarized on page 16.

This case also shows just how hard the IRS will press to bring the maximum penalties to bear. Tysinger was willing to expend a tremendous amount of time, energy and resources over the course of six years to fight the IRS over this penalty.

Many taxpayers do not have that kind of endurance or resources. Also, the special circumstances applicable to Tysinger (involving prior audits by the IRS on the same issue and the existence of a "preponderance" of favorable evidence in order to refute the penalties) may not be found in other dealership situations. These dealerships, if found with unfiled Forms 8300, should not expect the same result as Tysinger.

"Zimmerman System"	***Tysinger's Cash Reporting Compliance Procedures*** ***Corrective Measures Set up after 2nd IRS Compliance Audit in 1996***
Background	• After the IRS completed its 1996 Compliance Review, Mr. Tysinger (the dealer) directed the implementation of a system that would identify each cash transaction in excess of $10,000 and spark the filing of a Form 8300. • This task was delegated to CFO Zimmerman who appeared to be well-qualified to design and implement such a system. ◆ Mr. Zimmerman previously was an accountant with a CPA firm that specialized in servicing automobile dealership clients. ◆ He then went to work for a major automotive group (Fox Automotive Group) in the Baltimore, MD that had a Form 8300 compliance system in place. ◆ Mr. Zimmerman was employed there as the number two accounting executive until he left to join Tysinger Motor Co. as its CFO.
Procedures Focused Reporting Effort In F&I Dept.	• Whenever Tysinger sells a vehicle, the customer is taken to the Finance and Insurance ("F&I") Department to close the deal. • The F&I Department arranges vehicle financing, sells additional items, such as extended warranty plans and insurance, and effects the actual transfer of title. • Because the F&I Department sees every deal and handles all related financial arrangements, its managers are in the best position to identify each and every sale involving more than $10,000 in cash. • Mr. Zimmerman, therefore, focused the new cash reporting and compliance system on the F&I department of the Tysinger dealership. • ***Reporting threshold set at $5,000*** to provide a significant margin of safety for Form 8300 reporting. ◆ Mr. Zimmerman instructed the F&I Managers to report to him the details of each cash transaction of $5,000 or more so that he (Zimmerman) could personally prepare and file the Form 8300. ◆ Mr. Zimmerman adopted the lower threshold so that he would be in a position to review any questionable situations.
Training Sessions for Staff & Other Procedures	• Tysinger's Form 8300 Compliance System (the "Zimmerman System") involved more than oral instructions. • ***Training sessions.*** Mr. Zimmerman personally conducted training sessions for Tysinger personnel in which he explained the prohibition against structured transactions and emphasized the need to report each and every transaction involving $5,000 or more in cash. • All personnel (not just F&I Managers) were asked to inform Mr. Zimmerman about such cash transactions. • ***Checklist.*** Mr. Zimmerman created a cash transaction checklist that the F&I Managers were given to complete. • ***Memo describing system.*** He also drafted and circulated to Tysinger personnel a memorandum that described the new cash reporting and compliance system. • ***Responsibilities emphasized in Employee Handbook.*** The compliance procedures and responsibilities to identify and report all cash transactions in excess of $5,000 were added to the automobile dealership's *Employee Handbook.*
The IRS Even Approved	• After designing the "Zimmerman System," Mr. Zimmerman described the procedures to the IRS Agent who had conducted the 1996 Compliance Review. • The IRS Agent advised Mr. Zimmerman that the system "would be fine."
Remedial Steps Taken w/r/t Forms 8300 Not Filed for 1999-2000	• The dealership filed the four Form 8300s immediately with the IRS after learning of the problem. • The Company then analyzed its compliance procedures (i.e., the "Zimmerman System") to identify its deficiencies and to see how the Forms 8300 that should have been filed were overlooked. ◆ The problem lay in the system's lack of redundancy. ◆ The system relied solely on the F&I Managers to identify and bring to Mr. Zimmerman's attention reportable transactions. There was no "second set of eyes" or cross-checking by other personnel. • ***Changes/Improvements made to the system*** ◆ Tysinger changed the system to make two additional employees (the billing clerk ***and*** the cash clerk) also responsible for checking all cash deals and reporting qualifying transactions to Mr. Zimmerman. ◆ The cash checklist was made a mandatory part of ***every*** deal, not just for cash payments in excess of $5,000.

What the District Court Said	***Tysinger Did Not "Intentionally Disregard" Its Cash Transaction Reporting (Form 8300 Filing) Responsibilities*** *Page 1 of 2*
In General	• The factors identified in the Regulations define ***"intentional disregard"*** as a voluntary, rather than mistaken, failure to comply with the statutory filing requirements. • The Second Circuit, which is the only Federal appeals court to address the issue directly, agrees with the regulatory interpretation of the statute. • ***"Intentional disregard"*** as set forth in the penalty provisions of Sec. 6721 means conduct that is willful. ◆ The term "willful," in this context, requires only that a party act voluntarily in withholding requested information, rather than accidentally or unconsciously. ◆ Once it is determined . . . that the failure to disclose client-identifying information was done purposefully, rather than inadvertently, it is irrelevant that the filer may have believed he/she was legally justified in withholding such information. The only question that remains is whether the law required its disclosure. • This civil statute does not require proof of intent to violate the law.
The IRS' First Argument	• In recommending the maximum penalty amount, the IRS Agent relied upon Tysinger's prior defaults and its executives' general knowledge of Form 8300 filing responsibilities. • Given this predicate, the IRS considered as ***automatically willful*** any subsequent failure by Tysinger to file Forms 8300. • ***The Court said that*** such an approach by the IRS impermissibly changes an intent-based statute into one of strict liability. Because this is contrary to the plain language of the statute, the IRS' initial reasoning is flawed.
The IRS' Second Argument	• The IRS asked the Court to instead make a finding that Mr. Zimmerman, the Chief Financial Officer (unlike the Company/dealership as a whole) did not make a ***mistake***, because he ***intentionally*** did not complete and file the four Forms 8300 at issue. ◆ The IRS' argument assumed that Mr. Zimmerman's omissions should be imputed to Tysinger (i.e., to the Company). ◆ While a corporation can only act through its employees and agents, such imputation is not automatic when dealing with the assessment of tax penalties. • The IRS based its argument on the testimony of a former Tysinger employee. ◆ This former employee knew about some of the cash transactions because she was responsible for opening the office safe where cash was placed for safekeeping before being deposited in the Bank. ◆ She had testified that she advised Mr. Zimmerman of more than one reportable transaction by placing sticky notes on his telephone and leaving the deal folders in his office. ◆ In the situation involving Customer #2, she had placed a note in the deal folder which stated, ***"Please fill out a Form 8300."*** • Mr. Zimmerman testified under oath that he had never refused to file a Form 8300 when he knew about a qualifying cash transaction. • ***The Court said that*** the former employee's testimony did not (as the IRS contended) necessarily contradict Mr. Zimmerman's recollection. ◆ Mr. Zimmerman testified that he was extremely busy in 1999 and 2000 with Tysinger's Nissan dealership and was often out of the office. ◆ The reminder notes that were left for him on the files could easily have been overlooked in such a hectic environment. ◆ This explanation made more sense (to the District Court) than the IRS' alternative explanation. ◆ Neither Mr. Zimmerman nor the dealership had anything to gain from not filing the Forms 8300. Furthermore, the dealership had filed Forms 8300 in four of the eight instances where they were required.

What the District Court Said	***Tysinger Did Not "Intentionally Disregard" Its Cash Transaction Reporting (Form 8300 Filing) Responsibilities***
The IRS' Third Argument	• The IRS contended that dealership's F&I Managers and Mr. Zimmerman had consciously decided not to follow the "Zimmerman System" that had been implemented in 1996. • The IRS raised two arguments argument. ◆ First, when advised by the examining Agent that four qualifying transactions went unreported, Mr. Zimmerman said of the F&I Managers ... ***"They just don't care."*** ◆ Second, certain F&I Managers often failed to fill out the cash checklists that were (supposed) to be placed in each file. • According to the Court, neither of these items (whether considered together or separately) proves "intentional disregard." • ***The District Court said ...*** ◆ "Sloppiness is not the same as willfulness, particularly in a case such as this one where the business had extraordinarily few cash transactions. Less than one-half of one percent (8 out of 3000) of Tysinger's sales during 1999 and 2000 involved reportable amounts of cash. ◆ "It is not surprising that the employees on the front lines failed to cross every "t" and dot every "i" on those rare occasions when down payments were made with cash. ◆ "Nor can a reasonable trier of fact ***(which of course I am)*** base a conclusion of willfulness on Mr. Zimmerman's ***understandable expression of exasperation*** when he learned that four transactions (out of 3,000) had gone awry. ◆ "His statement does not prove what the F&I Managers themselves actually knew or intended."
The Court's Conclusions	• Tysinger carried (or satisfied) its burden of proving that it did not intentionally disregard its obligation to file Form 8300s in the four transactions at issue. • There is no proof that anyone at the dealership made a conscious decision not to report the transactions. • The failures to report were simply mistakes. • Tysinger's desire to comply with the law was demonstrated by the following ... ◆ Tysinger set up a system that it believed would be sufficient to identify reportable transactions. ◆ Tysinger filed a Form 8300 for half of the reportable transactions. ◆ The fact that the ("Zimmerman") compliance system had an internal flaw which resulted in its not working 100% of the time does not prove that it was intended to be a sham. ◆ The IRS produced no evidence from which the Court could even infer that Mr. Zimmerman intentionally designed a flawed compliance system.
The Court Added ... by the way ...	• Even if Tysinger had intentionally disregarded its obligation to file the Forms 8300, Tysinger still might avoid the penalties if its failure to report the cash transactions was "due to reasonable cause and not to willful neglect." ... see Section 6724(a). • The Regulations permitting this penalty waiver require the taxpayer to prove either ◆ That significant mitigating factors excuse the failure to file, or ◆ The failure to file arose from events beyond the taxpayer's control. • In addition, the taxpayer must also prove that he acted in a "responsible manner" both before and after the failure occurred. Acting in a responsible manner means: ◆ That the taxpayer exercised reasonable care, which is that standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations, and ◆ That the taxpayer undertook significant steps to avoid or mitigate the failure. • The Court said that it did need not decide whether Section 6724(a)'s mandatory waiver of penalties applied in Tysinger's case because it had found that Tysinger did not "intentionally disregard" its obligation to file the Forms 8300.

A FEW LESSONS & OTHER OBSERVATIONS FROM TYSINGER

First, Dual Penalties Are Imposed for the Same Infractions. In order to fully appreciate the predicament (or, in reality, the thicket of penalty provisions) that Tysinger was involved with, it should be understood that the Service assessed several penalties. Tysinger paid lesser penalties in connection with its mistakes, and it did not contest these penalties.

Apparently, this smaller penalty of $5,214.93 was assessed under Section 6722 "for Tysinger's failure to notify the four customers (by January 31 of the following year) that their cash down payments would be reported to the IRS." (It would appear that this penalty amount should have been $5,119.13 if the penalty computation were 10% of the sum of the cash down payments received ... $51,191.28 [$14,050.00 + 10,615.47 + 12,525.81 + 14,000.00] x 10% = $5,119.13 ... not $5,214.93.)

So, in effect, if a dealership fails to file a Form 8300, that failure automatically invokes a second penalty under Sec. 6722, regardless of whether penalties are assessed under Sec. 6721 (or even if the penalties assessed under Sec. 6721 are mitigated by Sec. 6724).

Second, the Maximum Penalty Per Transaction Is Not $25,000. The Penalty Could Have Been Much Larger. The penalty that Tysinger paid under Section 6721(e) and contested in court (and succeeded in avoiding) could have been significantly larger. The facts involved in each of the four customer situations simply involved cash down payments of amounts that were less than $25,000.

If the unreported cash down payments had been larger amounts, the penalties assessed could have exceeded $100,000 ($25,000 x 4). The cash down payments in all four cases (see item #1 above), each was an amount that was less than $25,000 ... i.e., these amounts ranged from $10,615 to $14,050. If Customer #1 had made a (unreported) cash down-payment of $30,000 on the $46,050 vehicle and obtained a loan for the $16,050 balance, then the penalty assessed would have been $30,000 ... because the amount of cash involved in the transaction ($30,000) was greater than $25,000. Similarly, if all four of the cash down payments had been $30,000, then the total penalty would have been $120,000 ($30,000 x 4).

That's why it's important to know what the Code Section provides (and to not rely on secondary generalizations). The penalty under Section 6721(e)(2)(C) is actually ... "the ***greater*** of (i) $25,000, ***or*** (ii) ***the amount of cash (...) received*** in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000." The Code Section makes it clear that the penalty is assessed ... "with respect to ***each*** such failure" (i.e., failures to file due to intentional disregard).

Carrying this discussion outside of the facts in *Tysinger* ... but just to make the point ... if a single unreported transaction had involved a vehicle costing $75,000 and the (unreported) cash down payment were $55,000, the penalty under Section 6721(e)(2)(C) would be $55,000 (the greater amount specified in (ii)) ... not the lesser amount of $25,000 specified in (i). See Example 1 of Reg. Sec. 301.6721(f)(6) which states that ... "the amount of the penalty ... is the greater of $25,000 or the amount of cash received in the transaction up to $100,000."

Third, if Unreported Cash Transactions Are Detected, File Forms 8300 Immediately. Note that the first thing that Tysinger did when the third IRS audit called attention to the unreported cash transactions was to file the Forms 8300.

Fourth, Don't Overlook the Possibility that Section 6724 May Apply to Avoid Penalties Assessed under Section 6721(e). If a taxpayer cannot prove that its failure to file Forms 8300 was unintentional, then Sec. 6724 may provide relief ... if all of its requirements can be satisfied. In Tysinger's case, this protection under Sec. 6724 was moot because Tysinger was able to prove that it had not ***intentionally disregarded*** its filing responsibilities. ***But, in other cases (where taxpayer intentionality is not involved),*** if extenuating circumstances caused the failures to timely file or completely report and the IRS assesses (lesser) penalties under Sec. 6721(a), then Sec. 6724 may (in these circumstances) provide relief from the penalties if all of its requirements can be satisfied.

Fifth, Observe Deadlines for Filing Forms 8300 and for Customer Notification.

- Cash report (Form 8300) must be filed not later than 15 days after the cash reporting transaction occurs. Note: This deadline is not the 15th day of the following month.
- Separate notification to the customer must be sent to the customer not later than January 31 of the following year.
  - Notification can be electronic ... But only if the customer has consented to receive electronic notification.
- These deadlines are provided by statute. They are inflexible, and "extensions for late filing" are not available.

Sixth, Comparable Penalties May Be Assessed if Form 8300 Is Filed with Incomplete Information.

- This was not an issue in *Tysinger*. However, all of the relevant penalty Code Sections refer to both failures to file and failures to report complete information on forms filed ... This can include "missing" TINs in certain instances.

Seventh, Tysinger Implemented Several Important Procedures, All of which Are Worth Copying.

- Develop written plans and procedures (which include redundancy to the extent practical).
- Set an internal reporting threshold below the $10,000 cut-off to emphasize the importance of tracking cash payments.
- Conduct periodic staff training sessions (including viewing NADA's tape on cash reporting).
- Emphasize the importance of employees complying with all cash reporting procedures by including reference to it in the *Employees Handbook*. Some dealerships require separate written acknowledgement of this by the employees.

Practice Guide	***Cash Reporting Questionnaire / Checklist***	*Yes, No Comments*
	1. Which individual(s) in the dealership is/are responsible for compliance with the cash reporting and Form 8300 filing responsibilities?	
	2. Is there a centrally-located file in which copies of all Forms 8300 filed are retained?	
	3. ***Retention requirement.*** As required by law, are copies of Forms 8300 previously filed with the IRS retained for at ***least 5 years***?	
	4. Is there a written document explaining the dealership's procedures for complying with the Section 6050I cash reporting requirements? ◆ When was it last updated? ◆ Does the plan involve or provide for "redundancy" (i.e., is more than one individual responsible for checking or reviewing for required filing situations)? ◆ Is the amount of "cash" set as the cut-off point for reporting exactly $10,000, or is it some lesser amount (intended to provide a cushion or internal "early warning" mechanism)?	
	5. When is the last time a staff training session was held on cash reporting requirements and procedures? ◆ Has NADA's video/DVD on dealership cash reporting been played for all appropriate employees? ◆ Have any new employees been hired who are involved with the cash reporting compliance procedures since the last training session?	
	6. ***Customer written notification.*** Have all statements notifying customers that Forms 8300 were filed been sent out by January 31 of the following year? ◆ Have copies of customer notification statements been maintained in a centrally-located file?	
	7. Are employees required to acknowledge their familiarity / training related to cash reporting requirements in some signed document? ◆ Is an affirmative statement to this effect included in the Employees' Handbook?	
	8. How frequently are self-audits conducted to assess compliance with Form 8300 reporting requirements? ◆ When is the last time a self-audit was conducted?	

Summary	***Form 8300 Cash Reporting Code Section Summary***
Sec. 6050I *(See pgs. 18, 24-25)*	• This Section and the underlying Regulations contain the requirements for reporting cash transactions to the IRS. ◆ Form 8300 is to be filed with the IRS by the 15th day after the date of the reportable cash transaction. Various penalties are assessed under Sec. 6721 if returns are not timely or correctly filed. ◆ By January 31 of the following year, a written statement is to be mailed to the customer identified on the Form 8300. Various penalties are assessed under Sec. 6722 if returns are not timely or correctly filed. • IRS Publication 1544 (5-2003) is a somewhat general guide for reporting cash payments over $10,000.
Sec. 6721 *(See pg. 19)*	• This Section imposes penalties for ... ◆ Any failure to file an information return on or before the required filing date, ◆ Any failure to include all of the information required to be shown on the return, and ◆ The inclusion of incorrect information on a return filed. • These penalties apply to Forms 8300 required by Section 6050I(a). [Reg. Sec. 301.6721-1(g)(3)(iv)] • Subsection ***6721(e)*** imposes significantly greater penalties if the taxpayer's failure to file correct or timely information returns is due to ***intentional disregard*** of the filing requirements. ◆ The penalties assessed by the IRS against Tysinger were imposed under this subsection.
Sec. 6722 *(See pg. 19)*	• This Section imposes penalties if taxpayers fail to furnish the correct payee statements required by Section 6050I(e). • These payee statements (i.e., notification to customers that Forms 8300 have been filed) are due by Jan. 31 of the year following the year in which a Form 8300 had been filed. • Tysinger paid penalties assessed under this Section and did not contest their assessment.
Sec. 6724 *(See pgs. 20-21)*	• This Section waives penalties for failures to file if the failures are "due to reasonable cause and not to willful neglect." • This was the Section which the District Court in *Tysinger* said it did not have to analyze because Tysinger proved that its non-filing of Forms 8300 was not the result of "intentional disregard" of the filing requirements under Section 6721(e). • ***In addition to*** showing that the failure to file was "due to reasonable cause," etc., the filer/taxpayer must also be able to prove that ◆ Other conditions (significant mitigating factors) were present, and ◆ The filer has taken additional affirmative actions and/or behaved in a manner evidencing its intent to comply with the requirements.

Sec. 6050I	***Returns Relating to Cash Received in a Trade or Business***
6050I ... (a)	• Requires any person engaged in a trade or business who receives ***more than*** $10,000 in cash in a single transaction or in related transactions to file Form 8300. ◆ The term "person" means that term as broadly defined in Section 7701(a)(1). • Cash in excess of $10,000 received by a person for the account of another person must be reported under this Section. • Cash received by a person who acts as an agent (or in some other similar capacity) and receives in excess of $10,000 from a principal, must report the receipt of cash under this Section. • Special rules, definitions and examples are provided for ◆ Multiple payments ... including certain installment payments that cause the total cash received within one year of the initial payment to total more than $10,000. • Reg. Sec. 1.6050I-1(c) contains definitions and examples of the following terms... ◆ *"Cash"* ... i.e., what payments constitute "cash" ◆ *"Designated reporting transaction" ... "Consumer durable" ... "Retail sale" ... "Transaction" "Related transactions" ... "Recipient"* ◆ Note: See pages 24-25 for special rules and definitions of terms.
6050I ... (b)	• Provides that the information to be reported on the cash reporting form must include ◆ Name, address and TIN of the person from whom the cash was received, ◆ The amount of cash received, ◆ The date and nature of the transaction, and ◆ Such other information as may be required on the Form. • Reg. Sec. 1.6050I-1(e) provides that ◆ Form 8300 is to be used for cash reporting purposes. ◆ Form 8300 must be filed with (i.e., mailed to) the IRS ... ▪ ***By the 15th day after the date the cash is received.*** ▪ However, special rules are provided for the 15-day deadline for filing situations that involve multiple payments relating to a single transaction (or to two or more related transactions). • How long should a business keep copies of Forms 8300 that were filed with the IRS ? ... ***Five years.*** ◆ "A person required (to file Form 8300) must keep a copy of each return filed ***for five years from the date of filing***." Reg. Sec. 1.6505I-1(e)(3)(iii)
6050I ... (c)	• Contains exceptions that waive the filing requirement for cash received ◆ By certain financial institutions. ◆ For certain or transactions occurring outside the United States.
6050I ... (d)	• Provides that the term "cash" includes foreign currency and certain monetary instruments. • Excludes from definition of "cash" certain monetary instruments with a face amount of not more than $10,000.
6050I ... (e)	• Requires each person filing a Form 8300 to furnish to each person named ("identified person") on the Form 8300 a ***written*** statement that shows ◆ Name, address & phone number of the information contact of the person required to file Form 8300, and ◆ The aggregate amount of cash received by the person required to make such return. • Deadline for written notice... ***On or before January 31 of the year following the calendar year*** for which the Form 8300 was required to be made. • The Regulation expanding on this requirement (Reg. Sec. 1.6050I-1(f)(2)) ◆ Omits including the phone number of the contact person (although this is specified in the statute). ◆ Requires that the notice include "a legend stating that the information contained in this statement is being reported to the Internal Revenue Service." • A statement shall be considered to be furnished to an identified person if it is mailed to that identified person at his or her last known address • Cross references to Section 6722 for civil penalties relating to the failure to furnish a correct statement to identified persons.
6050I ... (f)	• Contains prohibitions against attempts to structure transactions to evade reporting requirements. • This includes attempts to cause a business ◆ To fail to file a return (Form 8300), or ◆ To file a Form 8300 that contains a material omission or misstatement of fact, or ◆ To structure or assist in structuring any transaction. Attempts in this regard are also prohibited. • Prescribes penalties if a person violates these prohibitions.
6050I ... (g)	• Contains special provisions relating to cash received by clerks in Federal or State criminal courts.

Sec. 6721	Failure to File Correct Information Returns
6721 ... (a)	• The penalty imposed by this Section is $50 for each return with respect to which a failure occurs. ◆ ***Limit:*** The total penalty imposed for all failures during any calendar year cannot exceed $250,000. • Three failures could subject the taxpayer to penalty ... ◆ Any failure to file an information return on or before the required filing date, ◆ Any failure to include all of the information required to be shown on the return, and ◆ The inclusion of incorrect information on a return filed.
6721 ... (b)	• ***Reduction in penalties if correction of failure(s) occurs within certain time periods*** ◆ If correction is made not later than 30 days after due date for filing, ▪ $50 penalty is reduced to $15, and the overall calendar limit is reduced to $75,000. ◆ If correction is made on or before August 1 of the calendar year in which due date occurs, ▪ $50 penalty is reduced to $30, and overall calendar limit is reduced to $150,000. ▪ The reason for this secondary penalty reduction possibility is that, according to the Committee reports, August 1 is approximately the date on which the IRS begins intensive processing and use of data provided on information returns. Consequently, submission of the data after this date is effectively equivalent to not providing the data at all.
6721 ... (c)	• This subsection provides an exception to the penalties for a *de minimis* failure to include all required information. • Failure must be corrected before August 1 of the calendar year. • Failures to file returns by due date are not included in this exception ... only failures to include all information or the correction of misinformation originally submitted are covered. • The number of information returns for which the penalty will be waived shall not exceed the greater of (1) ... 10 returns, or (2) ... ½ of 1% of the total number of information returns required to be filed.
6721 ... (d)	• This subsection provides for lower overall limitations on the penalties for businesses with gross receipts of not more than $5 million. ◆ $250,000 maximum calendar year limit in Sec. 6721(a) is reduced to $100,000. ◆ $75,000 maximum calendar year limit in Sec. 6721(b) is reduced to $25,000. ◆ $100,000 maximum calendar year limit in Sec. 6721(b) is reduced to $50,000. • "Gross receipts" is defined as "average annual gross receipts of such person for the most recent three taxable years" (ending before such calendar year do not exceed $5 million).
6721 ... (e) ***Higher Penalty for Intentional Disregard of Requirement(s)*** ***Penalty Contested in Tysinger Motor Co.***	• Higher penalty for intentional disregard of requirement(s) to file timely correct information returns. • In the case of a return required to be filed under Section 6050I(a) ... i.e., Forms 8300 ... with respect to any transaction or related transaction, ***the penalty imposed shall be*** "the greater of ◆ "$25,000, or ◆ "The amount of cash (within the meaning of Section 6050I(d) received in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000." ◆ The amount of the penalty is the greater of $25,000 or the amount of cash received in the transaction up to $100,000. See Reg. Sec. 301.6721-1(f)(6) Example 1. • What constitutes ***"intentional disregard?"*** ◆ Code Section does not define the term ***"intentional disregard."*** ◆ Regulations provide that ... "a failure is due to intentional disregard if it is a knowing or willful (i) failure to file timely, or (ii) failure to include correct information. ◆ "Whether a person knowingly or willfully fails to timely file or include correct information is determined on the basis of all the facts and circumstances in the particular case." [Reg. Sec. 301.6721-1(f)(2)] • ***Facts and circumstances to consider*** include, but are not limited to ... ◆ Whether the failure to timely file (or the failure to include correct information) is ***part of a pattern of conduct*** by the person who filed the return ***of repeatedly failing to file timely*** or repeatedly failing to include correct information, ◆ Whether correction was promptly made upon discovery of the failure, ◆ Whether the filer corrects a failure to file (or a failure to include correct information) within 30 days after the date of any written request from the IRS to file (or to correct), and ◆ Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to timely file (or to correctly include information) on an information return.
Note	• Section 6721 covers all information returns in its scope. This summary refers only to Forms 8300, which are explicitly referenced as included by Reg. Sec. 301.6721-1(g)(3)(iv).

Sec. 6724	***If Failure Is Due to Reasonable Cause, etc. ... Penalties May Be Waived*** ***What It Takes to Escape the Penalties for Failure to File, etc.*** *Page 1 of 2*
6724 ... (a) *In General ...*	• Sec. 6724(a) provides that no penalty will be imposed with respect to any failure if it is shown that such failure is ◆ ***Due to reasonable cause***, and ◆ ***Not due to willful neglect.***
6724 ... (a) *Two Conditions to Show "Reasonable Cause"*	• ***Condition #1*** ... To show that ***reasonable cause*** exists, the filer/taxpayer must establish that either ◆ There are ***significant mitigating factors*** with respect to the failure, or ◆ The failure arose from ***events beyond the filer's control*** ... i.e., there was an ***"impediment."*** • ***Condition #2*** ... In addition, to show that ***reasonable cause*** exists, the filer/taxpayer must establish that it ***acted in a responsible manner,*** both ***before and after*** the failure occurred. ◆ If the filer establishes that there are significant mitigating factors for a failure, but the filer is unable to establish that it acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. ◆ If the filer establishes that a failure arose from an impediment, but is unable to establish that it acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty.
6724 ... (a) *Two Examples of "Significant Mitigating Factors"*	• ***Example #1*** ... The fact that prior to the failure the filer/taxpayer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or • ***Example #2*** ... The fact that the filer has an ***established history*** of complying with the information reporting requirement with respect to which the failure occurred. ◆ In determining whether the filer has such an ***established history***, consideration is given to ▪ Whether the filer has previously incurred penalties under Sections 6721, 6722, or 6723, and ▪ If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year. • Note: The IRS will consider other mitigating factors if they are presented by the filer.
6724 ... (a) *"Events Beyond ... Control"*	• Five specific possibilities are discussed ... See facing page. • Events other than the five specifically discussed may be considered beyond the filer's control. ◆ However, it is up to the filer to make the case for any others.
6724 ... (a) *"Acting in a Responsible Manner"*	• ***"Acting in a responsible manner"*** means that ◆ The filer exercised reasonable care, ... i.e., the filer exercised the standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations and in handling account information such as account numbers and balances, and ◆ The filer undertook significant steps to avoid or mitigate the failure, including, where applicable ... ▪ Requesting appropriate extensions of time to file, when practicable, in order to avoid the failure, ▪ Attempting to prevent an impediment or a failure, if it was foreseeable, ▪ Acting to remove an impediment or the cause of a failure, once it occurred, and ▪ Rectifying the failure as promptly as possible once the impediment was removed or the failure was discovered. • Concerning the rectification of failures to file as promptly as possible ... ◆ Ordinarily, a rectification is considered ***prompt*** ▪ If it is made within 30 days after the date the impediment is removed or the failure is discovered, or ▪ On the earliest date thereafter on which a regular submission of corrections is made. ◆ Submissions will be considered ***regular*** only if made at intervals of 30 days or less.
6724 ... (b)	• Provides that any penalty shall be paid on notice and demand (by the IRS). • Penalty shall be paid in the same manner as payment of a tax.
6724 ... (c)	• Special rule for failure to meet magnetic media requirements.
6724 ... (d)	• Defines the term ***"information return."*** ◆ Forms 8300 are specifically included. [Sec. 6724(d)(1)(B)(v)] • Defines the term ***"payee statement."*** ◆ Customer notifications by Jan. 31 of the following year re: Forms 8300 filed are specifically included. [Sec. 6724(d)(2)(L)]
6724 ... (e)	• Not discussed ... Special rules for certain partnership returns.

Sec. 6724	***If Failure Is Due to Reasonable Cause, etc. ... Penalties May Be Waived*** ***What It Takes to Escape the Penalties for Failure to File, etc.*** *Page 2 of 2*
Sec. 6724(a)	*"Events Beyond the Filer's Control ... 5 Possibilities*
#1 "Unavailability of the Relevant Business Records"	• The filer's business records must have been unavailable under such conditions, in such manner, and for such period as to prevent timely compliance (ordinarily at least a 2-week period prior to the due date (with regard to extensions) of the required return or the required date (with regard to extensions) for furnishing the payee statement), ***and*** • ***The unavailability must have been caused by a supervening event.*** A "supervening event," such as ◆ A fire or other casualty that damages or impairs the filer's relevant business records or the filer's system for processing and filing such records, ◆ A statutory or regulatory change that has a direct impact upon data processing and that is made so close to the time that the return or payee statement is required that, for all practical purposes, the change cannot be complied with, or ◆ ***The unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for filing a return or furnishing a payee statement.***
#2 "Undue Economic Hardship Re: Filing on Magnetic Media"	• The filer failed to file on magnetic media because the filer lacked the necessary hardware. • The filer will not qualify for relief (from the penalties) unless ◆ The filer attempted on a timely basis to contract out the magnetic media filing, ◆ The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns, ◆ The cost was supported by a minimum of two cost estimates from unrelated parties, and ◆ The filer filed the returns on paper. • Relief under the "magnetic media" provision will not ordinarily be available if a filer received a reasonable cause waiver in any prior year due to an undue economic hardship relating to filing on magnetic media.
#3 "Certain Actions of the IRS"	• The failure must be shown to be due to the filer's reasonable reliance on erroneous written information from the Internal Revenue Service. • ***"Reasonable reliance"*** means that the filer relied in good faith on the information. ◆ The filer shall not be considered to have relied in good faith if the IRS was not aware of all the facts when it provided the information to the filer. • The filer must provide a copy of the written information provided by the IRS and, if applicable, the filer's written request for the information.
#4 "Certain Actions of an Agent"	• The filer exercised reasonable business judgment in contracting with the agent to file timely correct returns or furnish timely correct payee statements with respect to which the failure occurred. • This includes contracting with the agent and providing the proper information sufficiently in advance of the due date of the return or statement to permit timely filing of correct returns or timely furnishing of correct payee statements. • The agent, in turn, satisfied one of the reasonable cause criteria • Note: the term "agent" here does not refer to an agent of the IRS.
#5 "Certain Actions of the Payee, etc."	• The failure resulted from the failure of the payee, or any other person required to provide information necessary for the filer to comply with the information reporting requirements ("any other person"), to provide information to the filer, or • The failure resulted from incorrect information provided by the payee (or any other person) upon which information the filer relied in good faith. • Special, extremely complicated, rules are provided for situations where missing or incorrect TINs (Taxpayer Identification Numbers) are involved ... Reg. Sec. 301.6724-1(e) relates to ***missing*** TINs and Reg. Sec. 301.6724-1(f) relates to ***incorrect*** TINs. • Note: The term, "Actions of the payee" includes actions of any other person providing necessary information with respect to the return or payee statement.
Other events beyond the filer's control may be considered by the IRS if they are satisfactorily documented by the filer.	

BUY-HERE, PAY-HERE DEALERS FACE SPECIAL PROBLEMS IN MEETING THEIR CASH TRANSACTION REPORTING RESPONSIBILITIES

BHPH FORMS 8300

From our review of the *Tysinger* case and various NADA publications addressed to cash reporting, it seems that the rules and interpretations for filing Forms 8300 are fairly well-defined and understood by franchised new car dealers. For these dealers, the matter of compliance typically comes down to a matter of performance.

Generally speaking, the BHPH dealer "industry" is not yet as sophisticated and mature as the franchised new car dealer industry, although the National Alliance of Buy-Here, Pay-Here Dealers and other organizations are definitely making considerable progress in many areas, including the area of dealer education.

It would seem, however, that buy-here, pay-here (BHPH) dealers are in a far more precarious position in connection with both understanding their cash transaction reporting responsibilities and complying with them.

What complicates matters for BHPH dealers is the nature of their business and its many dissimilarities compared to the typical franchise new car dealer.

Typically, the franchised new car dealer does not become extensively involved with how the customer performs on any indebtedness he/she incurs in making the purchase. The typical new car dealer quickly becomes disassociated from the customer's note.

On the other hand, most buy-here, pay-here dealers are selling the car/vehicle in order to sell the financing. The financing is really "where the money is at" for many BHPH dealers. Or, to tweak the phrase, for many dealers, "the financing is where the ***real*** money is at."

In other words, the BHPH dealer is in business to sell financing, and the sale of a reasonably performing vehicle to a credit-challenged customer is the means to that end. And, this statement is true even though extensive analysis shows that a high percentage of BHPH customers will default for one reason or another before the term of the loan, leaving the dealer (or the note holder) to repossess the vehicle ... if he/she can, or wants to.

As evidenced by a significant body of Private Letter Rulings and Technical Advice Memoranda, chapters in various IRS *Audit Guides* and presentations at numerous conferences, the IRS is well aware of the large, and rapidly growing, BHPH industry.

Even though a typical reaction might be "You've got to be out of your mind," the likelihood is that many BHPH dealers could be regularly involved in significant cash transactions that could unexpectedly result in triggering the requirement that Forms 8300 should be filed.

The intricacies of the cash reporting rules and several of the definitions may trip up a BHPH dealer if he thinks that the rules only apply if vehicles are sold for more than $10,000 *(... Wrong!)*, or if he thinks that there is some "exception for installment sales that negates the cash reporting rules *(... Wrong again!)*. Furthermore, he's also wrong if he thinks that he's minimized his cash reporting responsibilities by setting up a related finance company.

In March of 2006, the IRS Motor Vehicle Technical Advisor issued an *Automotive Alert!* entitled, *"Cash Reporting and Your Dealership... Questions & Answers on Form 8300."* This was reprinted on pages 40-45 of the March 2006 *Dealer Tax Watch*.

Although these dealership-specific questions and answers are helpful, their implications for buy-here, pay-here dealers may be so subtle that they might not be fully appreciated. Basically, the *Alert!* could be improved, or expanded, by considering more directly some of the problems that buy-here, pay-here dealers face in this area.

This article discusses some of the problem areas for BHPH dealers and expands on two questions and answers that the *Automotive Alert!* touched upon. A summary of some of the special rules, definitions and terms appears on pages 22-23. The two questions (#16 & 21) from the *Automotive Alert!* are more thoroughly discussed on page 27, and a few questions (and suggested answers) that might provide more specific guidance or clarification appear on pages 30-31.

According to statistics recently released by the National Alliance of Buy-Here, Pay-Here Dealers, both the average cost of a vehicle sold and the average selling price of that vehicle are significantly less than $10,000. What is overlooked in many discussions about BHPH dealer cash reporting responsibilities is that, ***in many cases, selling price of***

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the vehicle is irrelevant. It does not matter... it is not the relevant criterion.

Several facts suggest that cash reporting and filing Forms 8300 can be significant responsibilities for many BHPH dealers. ***First,*** the activities of many dealers and the higher prices of some used vehicles (especially light-duty trucks) result in costs and selling prices that, although possibly less than $10,000, are much closer to that amount. ***Second,*** every BHPH dealer tries to squeeze as much cash as possible out of the customer "up front."

Third, and more significant in terms of cash reporting compliance exposure, is the following fact... It is necessary to look at the combination of the expected revenue from the financing of the vehicle ***plus*** the selling price of the vehicle (and, by the way, plus the selling price of any other "add-ons" or warranties) to recognize more clearly the possibility or potential for the dealer to receive (sometime in the future) enough cash from a customer to trigger the need to file Form 8300.

FORGET SELLING PRICE

It's not the selling price of the vehicle ... It's the whole deal, including financing ... that has to be reckoned with.

It seems clear that the sale of the financing of the vehicle and the sale of the vehicle are linked together as a "transaction" under the definition of that term in the Regulations. The Answer to Question #16 in the recent IRS *Automotive Alert!* makes it clear that the two elements are to be linked in evaluating potential cash reporting responsibilities.

For cash reporting purposes, the term "transaction" means the underlying event precipitating the payer's transfer of cash to the recipient. And, the Regulation indicates that the term "transaction" includes, but is not limited to, the sale of goods ***or services***. Presumably, the sale of financing to a BHPH customer falls squarely within these terms.

This is critical because the rules regarding cash reporting responsibilities in connection with the receipt of multiple payments and/or installment payments do not contain any references to the necessity for there to be the sale of a consumer durable at a price in excess of $10,000 (or at any other price, for that matter) in order for the special rules regarding the tracking of payments within a 12-month period to apply.

Furthermore, as discussed below, because of the nature of the business, the importance of whether the sale of a consumer durable is involved is not critical in most BHPH situations. This "consumer durable" prerequisite becomes important only in the context of determining whether payments made by customers using certain monetary instruments will be considered as "cash."

In this narrow context (and only in this narrow context), certain payments in a form ***other than cash*** may not be counted as cash if ***the total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50% of the purchase price of the sale*** [Reg. Sec. 1.6050I-1(c)(1)(v)(B)]. Some CPAs refer to this as the so-called "installment sale exception."

What is critical to note here is that this provision does not apply where BHPH customers are making their weekly/biweekly or monthly note payments in cash.

This so-called "installment sale exception" only applies to the receipt of certain ***other monetary instruments*** under the expanded definition of "cash." In many, if not the majority of cases, this distinction and the "installment sale exception" will have no bearing at all on the typical BHPH dealer receiving payments on installment notes because his customers will be making their weekly, etc., payments in cold, hard cash.

ON-SITE PAYROLL CHECK CASHING

BHPH customers often are carefully controlled, reminded and monitored. They are expected to bring their (cash) payments (directly) to the BHPH collection office every payday. No exceptions. Many of the vehicles they drive have starter-interrupt devices or other mechanisms to remind them or to make it difficult (dealers hope, impossible,) for the customer to forget (or to drive their car very far, if they forget) to make a payment.

What if the BHPH collection office cashes the customer's paycheck and returns the full amount to the BHPH customer who, in turn, makes his/her weekly, etc., note payment? Does this payment constitute the receipt of cash by the BHPH dealer for cash reporting purposes (i.e., is this a cash transaction?)?

If the collection office says, "Bring your paycheck here, and we'll cash it for you," does this avoid the cash reporting requirements (because a business check is not considered as cash)? Or, in this situation, is the BHPH dealer receiving cash? It would seem that the answer to the latter question would be "Yes," because, in cashing the customer's paycheck, the customer is first in constructive receipt of the full amount of his/her net pay, even though he/she immediately or simultaneously tenders cash in payment of his/her weekly, etc., installment due at that time.

see **BUY-HERE, PAY-HERE**, page 26

Forms 8300	***Cash Reporting: Special Rules, Definitions & Terms***
"Cash" ***What Counts as Cash for Reporting Purposes***	• ***General rule #1*** ... Coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued, and • ***General rule #2 ... (Expanded definition of "cash")*** ... Cash includes certain monetary instruments having a face amount of ***not more than $10,000*** ... if that monetary instrument is received in a "designated reporting transaction." These monetary instruments are ... ◆ Cashier's checks (by whatever name called, including "treasurer's check" and "bank check") ◆ Bank drafts ◆ Traveler's checks ◆ Money orders • However, the above monetary instruments (in General rule #2) are ***not*** treated as cash if they ... ◆ Constitute the proceeds of a loan from a bank, ◆ Are received in payment of certain installment sales (see discussion below), *or* ◆ Are received as part of certain down payment plans (see discussion below). • These monetary instruments ***will be*** treated as cash if they are received in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the cash reporting requirements. • Cash does ***not*** include (i.e., certain monetary items are ***not*** considered cash) ... ◆ Personal checks ◆ Checks drawn on business accounts ◆ Certified checks ◆ Credit card charges
Three (3) Exceptions ... ***When Cashier's Checks, etc.,*** ***(Received in Designated Reporting Transactions)*** ***Will <u>Not</u> Be Treated as Cash***	• ***Proceeds from bank loans*** ◆ ***If*** the instrument constitutes the proceeds of a loan from a bank. ◆ The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation to substantiate that the instrument constitutes loan proceeds. ▪ Often, this documentation may be in the form of a written lien instruction from the issuer of the instrument that appears on the face or reverse of the instrument. • ***Payments on a promissory note or an installment sales contract*** ◆ ***If*** the instrument is received in payment on a promissory note or an installment sales contract. However, this applies only if ... ▪ Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers, and ▪ ***The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50% of the purchase price of the sale.*** [Reg. Sec. 1.6050I-1(c)(1)(v)(B)] ◆ This includes payments on leases that are considered to be sales for Federal income tax purposes. • ***Payments pursuant to certain down payment plans*** ◆ ***If*** the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale. However, this applies only if ... ▪ The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers, and ▪ The instrument is received more than 60 days prior to the date of the sale. [Reg. Sec. 1.6050I-1(c)(1)(vi)(B)]
Comments	• ***Multiple payments.*** There are detailed, special rules where retailers receive cash from customers in a series of multiple and/or installment payment arrangements. • Transactions include (but are not limited to) a sale of goods or services, ***and may not be divided into multiple transactions in order to avoid ... reporting.*** ◆ The cash reporting requirements focus on the ***cause*** of payment and receipt of cash, rather than the ***acts*** of paying and receiving. • ***Regulations provide precise definitions for other terms used ... See facing page for more on this.*** • ***Delinquent account collections.*** A person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of cash in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (i.e., where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

Forms 8300	**Cash Reporting: Special Rules, Definitions & Terms**
Cash Received from Customers in a Series of Multiple Payments and/or Installments	• ***Initial payment in excess of $10,000*** ◆ Recipient must report the initial payment within 15 days of its receipt. • ***Initial payment of $10,000 or less*** ◆ Recipient must aggregate the initial payment and subsequent payments ***made within one year of the initial payment*** until the aggregate amount exceeds $10,000, and ◆ Report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed $10,000. • ***Subsequent payments*** ◆ In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000. ◆ The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. ▪ If more than one report would otherwise be required for multiple cash payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made. • ***Example*** ... On January 10, 1991, M receives an initial cash payment of $11,000 with respect to a transaction. M receives subsequent cash payments with respect to the same transaction of $4,000 on February 15, 1991, $6,000 on March 20, 1991, and $12,000 on May 15, 1991. ◆ M must make a report with respect to the payment received on January 10, 1991, by January 25, 1991. ◆ M must also make a report with respect to the payments totaling $22,000 received from February 15, 1991, through May 15, 1991. ◆ This report must be made by May 30, 1991, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.
"Designated Reporting Transaction" ***(Definition)***	• A retail sale of a ***consumer durable*** ... ◆ An item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, ◆ That can reasonably be expected to be useful for at least 1 year under ordinary usage, and ◆ That has a ***sales price of more than $10,000***. • Also includes the receipt of funds by a broker or other intermediary in connection with a retail sale of a ***consumer durable***. • ***"Retail sale"*** means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers. • Retail sales of collectibles, or a travel or entertainment activities ... are also included.
"Transaction & Related Transactions" ***(Definition)***	• ***"Transaction"*** means the underlying event precipitating the payer's transfer of cash to the recipient. ◆ Transactions include (but are not limited to) a sale of goods or services, a sale of real property, a sale of intangible property, a rental of real or personal property, an exchange of cash for other cash, the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement, a payment of a preexisting debt, a conversion of cash to a negotiable instrument, a reimbursement for expenses paid, or the making or repayment of a loan. • A transaction may not be divided into multiple transactions to avoid cash reporting. • ***"Related transactions"*** means any transaction conducted between a payer (or its agent) and a recipient of cash in a 24-hour period. ◆ Transactions conducted between a payer (or its agent) and a cash recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.
"Recipient" ***(Definition)***	• ***"Recipient"*** means the person receiving the cash. ◆ ***General rule*** ... Each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall be deemed a separate recipient. ◆ ***Exception*** ... A branch that receives cash payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making cash payments to other branches of such person. • TAM 200501016 involves the question of whether certain employees were separate "recipients."

(Continued from page 23)

INSTALLMENT - MULTIPLE PAYMENTS

What BHPH dealers must do is keep track of whether or not cash in an aggregate amount in excess of $10,000 is received in the course of ***any*** 12-month period. Reg. Sec. 1.6050I-1(b) contains all of the details concerning the receipt of multiple cash deposits or cash installment payments. These are summarized on the previous two pages.

The typical "starting point" for tracking accumulated cash payments from customers is the date of sale. However, the strict requirement is that the collection of cash in excess of $10,000 in ***any*** consecutive 12-month period triggers the requirement to file Form 8300.

The Regulations further provide that, in addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000.

Possible Surprises. It should be noted that an unexpected event (such as gambling success, the receipt of an inheritance, the repayment of a loan, the receipt of settlement or award) could result in the customer getting a cash windfall that he/she decides to use as a partial or complete payoff on the note. If the customer uses cash for that payment, this event could be the trigger for the filing of Form 8300.

Also, the typical BHPH customer may be financing his/her vehicle purchase over 60 to 72 months, based on how much of his/her paycheck is available, after living expenses, to afford the vehicle payment.

While any combination of numbers could be used to make the point, consider the following example. Assume that a typical BHPH customer is several months (or years) along in the contract. Assume further that both spouses are working, so that they are making a total of $460 as their monthly payments on the contract. Now assume further that one of them gets lucky at the racetrack or casino and comes into the BHPH collection office with $5,000 in cash to pay down or to pay off the note. Unlikely? ... Yes. But, possible? ... Yes, again.

Under this scenario, at some point, the combination of the large, unexpected payment ($5,000) plus the down payment and/or previous monthly payments and/or subsequent monthly payments could result in the BHPH dealer (technically, the "recipient") collecting more than $10,000 in cash. Bingo! This triggers the filing of Form 8300. Remember: It is ***any*** combination of 12 consecutive months that has to be looked at. And, that period of 12 months may or may not include the initial down payment on the sale if that were made in cash.

RELATED FINANCE COMPANIES

What about related finance companies? How do they fit into the cash reporting picture? Many BHPH dealers have set up related financing companies, and shortly after selling the vehicle, they may transfer the customer's note to this entity. This seems to create more cash reporting complications for the BHPH dealer.

If the sale of the vehicle and the sale of the financing (and, obviously, subsequent payments by the customer on the installment note) are all linked as one transaction ... or as a series of related transactions ... then several cash reporting challenges arise for the BHPH dealer-RFC taken together.

Is the RFC a "recipient" in the cash reporting / technical sense of that word? In at least two unofficial IRS pronouncements, TAM 200501016 and LTR 9718003, the IRS very broadly interpreted a taxpayer's responsibilities for tracking the collection of cash by parties other than the initial seller of the commodity.

In addition to the Regulations, these rulings could be interpreted to tie together cash down payments received by the seller in one entity (the BHPH dealer) and later cash collections on the installment note by another entity (either an RFC or an unrelated finance company, under certain circumstances). This TAM and LTR are summarized on page 28.

The IRS may take the position that the BHPH dealer's related finance company should be considered a "recipient" (or some other responsible reporting agent) that would be linked back to the BHPH dealer's sale (and subsequent collections on the note) prior to the sale of the note to the related finance company. In short, one entity's collection period would be tacked on to the other's.

Therefore, if cash collections from a customer by the BHPH dealer's RFC are required to be considered as an extension of collections by the BHPH dealer before the customer note was sold to the RFC, the accumulation of information over consecutive 12-month periods will overlap from one entity (the BHPH dealer) to the other (the RFC).

Under this interpretation, there would have to be some "integration" of both entities' recordkeeping concerning the receipt of cash (in its technical term) from the customer on his/her note. Cash will always be cash. Therefore, the receipt of cash by either the BHPH dealer or by the RFC needs to be tracked, ***aggregated***, and considered over any 12-month period.

The exception, explained previously (that exists for not counting certain monetary instruments as

see **BUY-HERE, PAY-HERE**, page 29

Selected Questions & Answers on Form 8300 from the IRS Automotive Alert!	
Background	• Two questions in the IRS Motor Vehicle Technical Advisor March 2006 *Automotive Alert!* on cash reporting responsibilities specific to automobile dealerships are of special interest to buy-here, pay-here dealers. • Questions 16 and 21 are set forth in full below, with our additional comments intended to bring the cash reporting responsibilities for BHPH dealers into sharper focus. • We believe it would be advisable to include additional questions specifically related to buy-here, pay-here operational aspects to clarify cash reporting responsibilities. For more on this, see pages 30-31.
IRS Alert Question #16	
Question #16	• ***A customer makes weekly payments in cash to a dealership as a lease payment or loan payment on a vehicle. During a twelve-month period, these payments total more than $10,000. Are these payments considered related transactions and is the dealership required to file a Form 8300?***
IRS Answer	◆ ***Yes, the weekly lease or loan payments constitute payments on the same transaction (the leasing or purchase of the vehicle.)*** ◆ ***Accordingly, the dealership is required to file Form 8300 when the total amount exceeds $10,000.*** ◆ ***Each time the payments aggregate in excess of $10,000, the dealership must file another Form 8300 within 15 days of the payment that causes the additional payments to total more than $10,000.***
Our Comments ...	• Question 16 could pose significant problems for BHPH dealers. Note that it is a given in the facts that payments by the customer on his/her note are all made in cash. • The typical used vehicle sold by a BHPH dealer may have a selling price of less than $10,000. Based on this fact alone, one might conclude that the typical BHPH dealer would have no cash receipt tracking and reporting obligations. That conclusion would be wrong for several reasons. • Question 16 makes it clear that the IRS is looking at the total of the amounts paid in connection with the transaction. In many instances, when the total financing cost over the life of the contract is added to the actual selling price of the vehicle ... (selling price + financing + all other add-ons, etc.) ..., the overall ***transaction*** may be considerably in excess of $10,000. • If this is a reportable transaction, then the BHPH dealer must keep a running account of the total amounts of cash paid by the customer from the initial down payment through the completion of his/her payments on the installment note (possibly several years later). ◆ In this case, the "50%-paid-within-60-days" timing rule for collections on installment notes found in Reg. Sec. 1.6050I-1(c)(1)(v)(B) only comes into play if the customer is making subsequent payments in the form of certain monetary instruments. If the customer is making payments in cash, this timing rule is not relevant.
IRS Alert Question #21	
Question #21	• ***Do payments in excess of $10,000 in cash paid to a body shop need to be reported? Do requirements apply to services as well as goods?***
IRS Answer	◆ ***Yes - Cash received in excess of $10,000. However, a service is not a consumer durable so the expanded definition of cash does not apply to payments for services. The body shop would file an 8300.***
Our Comments ...	• We agree with the answer. However, we believe that the statement making reference to ***"a consumer durable"*** may be confusing to some readers. • The importance of the prerequisite for the sale to involve a consumer durable (which must have a selling price in excess of $10,000) is not relevant at all in all cases where strictly cash/currency is being received. ◆ This prerequisite (i.e., the sale of a consumer durable) is relevant only when the customer is making payments on installment notes by using certain monetary instruments (which are not strictly cash/currency, but which would be treated as "cash" under the expanded definition of cash). • The Regulatory framework places the rules for reporting multiple installments of cash (received within a 12-month period) in a separate Section from the Section which discusses the other rules relating to circumstances when customer payments arising out of the sale of a consumer durable are received in the form of certain monetary instruments. • For purposes of cash reporting responsibilities, the integrally-related sale of the consumer durable ***and*** the sale of the financing together constitute the transaction/event which must be tracked by the BHPH dealers. This is clearly the message in Question #16.

LTR 9718003 | *Responsibility for Tracking Cash Receipts Is Broadly Interpreted*

Letter Ruling 9718003 addresses certain questions relating to the collection of payments by "persons" who might be considered as brokers or other intermediaries in connection with the retail sale of customer durables. After consulting Webster's *Third New World International Dictionary*, the IRS concluded that the ***"other intermediary" language was intended to broaden the class of persons required to report (Forms 8300) without specifying in advance every contingency in which the Regulation could apply.***

The Revenue Reconciliation Act of 1990 amended Section 6050I to provide an expanded definition of the term "cash" to include certain monetary instruments under certain circumstances. The stated purpose of this amendment was "to strengthen the cash reporting rules to discourage money laundering to the greatest extent possible ... even in those situations where the burden on businesses would be greater, the Service may impose additional reporting requirements if it determines trends in non-compliance and abuse."

In holding that the taxpayer was required to file Forms 8300, the IRS concluded that ... ***"A construction of the phrase 'other intermediary' in a manner that excludes*** ... [reporting responsibilities by the taxpayer] ... ***would thwart the Regulatory framework.***"

TAM 200501016 | *Responsibility for Tracking Cash Receipts Is Broadly Interpreted*

TAM 200501016 analyzed the Form 8300 filing requirements in connection with the receipt of installment payments by a retailer of home furnishings and accessories. The issue in this TAM was whether certain employees of the retailer who received cash payments from customers on their installment notes would be deemed to be "separate recipients" for purposes of Section 6050I. The employees receiving the cash payments were not the employees who had made the sales.

The employees receiving the cash payments from the customers entered the payments into the computer system transmitting the payment to a central unit. Because of security policies, the employees were not authorized to access customer account histories so that they could not determine the aggregate amount of cash payments made by a customer on a purchase.

In this case, none of the individual sales of customer durables involved a price in excess of $10,000; however, some customers bought several items at one time, and the result was a total selling price of the consumer durables in excess of $10,000.*

The pertinent Regulation is the one dealing with multiple cash installment payments relating to a single transaction or to two or more related transactions. If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds $10,000. At that time, the recipient must report with respect to the aggregate amount within 15 days of receiving the payment that causes the aggregate amount to exceed $10,000.

The TAM states that the term "transaction" is the underlying event precipitating the payor's transfer of the cash to the recipient. In this regard, "Transactions include (but are not limited to) a sale of goods or services, ***and may not be divided into multiple transactions in order to avoid ... reporting.***" ... "The reporting requirements of Section 6050I focus on the ***cause*** of payment and receipt of cash, rather than the ***acts*** of paying and receiving.

The TAM continues ... "Here, in a single sale, customer's purchased multiple pieces of furniture, having a total sales price in excess of $10,000. The underlying event, or cause of payment, was the purchase of furniture by the customer. Therefore, the ***transaction*** occurred when (the) customer, in a single sale, purchased multiple pieces of furniture from (the retailer), and the total sales price exceeded $10,000. Because (the retailer's) customers paid for the purchase via a series of cash payments totaling in excess of $10,000, (the retailer) should have filed a Form 8300 within 15 days of receiving the payment that caused the total to exceed $10,000."

One of the technical questions was whether the employees receiving the payments were "recipients." The Regulations state that generally, each store, division, branch, department, headquarters or office comprising a portion of a person's trade or business shall be deemed a separate recipient. However, there is an exception ... a branch that receives cash payments will ***not*** be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have the reason to know the identity of payors making cash payments to other branches of such person.

After analyzing the two examples in the Regulations (one involving payments to different branches of a commodities broker and the other analyzing wagers placed at separate race track betting windows), the TAM concluded that the furniture retailer would have reason to know the identity of persons making (cash) payments to its employees in the ordinary course of business through its central unit.

The TAM concluded that (1) the retailer must report all the related cash payments and (2) the employees who transmit separate information to an employer's central unit are not considered to be separate recipients of cash for purposes of Section 6050I.

Our Comments on this TAM ... * First, since the customers made subsequent payments in cash, it would appear that the fact that the selling price was in excess of $10,000 is relevant only insofar as it signals the possibility that cash payments in excess of $10,000 may be received over the period of time that the transaction runs its course.

Second, the retailer in this TAM had been involved in two previous, separate Form 8300 compliance reviews by the IRS. Another issue in this TAM was whether the Agent should impose higher penalties under Section 6721(e) ... the intentional disregard penalty ... and, in this TAM, the IRS National Office suggested that these higher penalties should not be imposed.

It would seem that the conclusions in this TAM regarding Form 8300 filing requirements would be equally applicable to typical BHPH transactions when the sale of the vehicle and its financing are considered to comprise a single event/transaction giving cause to the payment and receipt of cash.

(Continued from page 26)

cash under the expanded definition of cash) will ***not*** apply to the RFC for the same reason that it does not apply to the BHPH dealer. Therefore, how much cash is collected within 60 days, and whether that percentage is more or less than 50% of the selling price, is irrelevant. These refinements don't even come into the picture because the customers have already cashed their paychecks ... or have been paid in cash by their employers ... so they are not making installment payments (or other partial payments) using these instruments.

SOME SUGGESTIONS

The preceding discussions suggest that buy-here, pay-here dealers should have cash reporting compliance programs in place.

Accounting for cash receipts on a monthly basis is not good enough. In order to be fully compliant with the multiple / installment payment reporting requirements, software would have to be sophisticated enough or capable to make continuous combinations ***every time a cash payment is received.*** It is not enough to make these computations at the end of every month. Why? Because the required filing date for Form 8300 is 15 days after receipt of the last cash payment ... not 15 days after the end of the month in which that payment was received.

If adequate cash receipt reporting software is not in place, perhaps one way for BHPH dealers to partially cope with these responsibilities is for the dealer to have in place an internal reporting mechanism that will notify a responsible employee of the fact that an unusually large cash payment has been received from a customer. Whenever such a cash payment occurred, that appropriate individual could determine whether or not the Form 8300 filing requirement might be close to being triggered.

In this regard, at the very least, it may be desirable to borrow a page from Tysinger's book and set an internal reporting threshold (of, say, $5,000) in connection with any single cash receipt so that tracking at that point can be commenced (if not sooner).

Finally, the BHPH dealer should always initially obtain and verify the customer's TIN number. The potential for filing Forms 8300 may arise under many unanticipated circumstances at some later date, and if the customer's verified TIN number is not already in the file, even further filing complications could arise.

SUMMARY

The overall cash reporting climate for BHPH dealers may be summarized as follows. BHPH dealers are likely to be handling significant amounts of cash, and this could create unexpected Form 8300 filing responsibilities, either sooner or later. BHPH dealers are less likely to be collecting payments on notes from customers using monetary instruments that bring into play a variety of special rules more likely to be associated with new car dealers.

The IRS has given indications that the cash tracking responsibilities will be broadly interpreted, and Question #16 in a recent *Automotive Alert!* has several important implications for buy-here, pay-here dealers.

Naturally, one tries to read the Regulations looking for "loopholes" or favorably permissive interpretations in the language that would obviate the need for filing Forms 8300. In this area, the stakes are too high, and the non-filing penalties too severe, to err on the side of interpretations that result in the non-filing of Forms 8300 in questionable situations.

Until the IRS provides guidance to the contrary, we have some (significant) concerns about BHPH dealers' exposure to interpretations that (would) increase their cash reporting compliance requirements. If these concerns are warranted, it may be appropriate for the BHPH community to consider requesting clarification in the form of formal answers from the IRS to a number of questions.

As a starting point in this process, we have summarized some of these questions on the next two pages. Perhaps, these questions and others might become the subject of guidance issued for the BHPH industry under the IRS' Industry Issue Resolution (IIR) program. If IIR consideration is not possible or available, then, at least, clarification in the form of additional or supplemental *Automotive Alert!* "Questions and Answers" would be desirable.

As always, we welcome readers' thoughts and comments on these issues.

Questions Needing Answers	**BHPH Dealers ... Cash Reporting Requirements**	
Suggested Questions & Answers to Clarify	• The importance of the definition of the term "transaction" which combines both the sale of a used vehicle and its financing by the BHPH dealer as a single underlying event for ***cash receipt tracking*** purposes. • The possibility that the receipt of cash payments over the term of the sale and financing contract might trigger the requirement to file Forms 8300. • The continuity of ***cash receipt tracking*** that continues when customer notes are sold to an RFC. • Special rules and exceptions which by their terms will ***not*** apply to BHPH dealers (i.e., those rules relating to collections when payments are made on installment sales by customers who use certain monetary instruments other than cash, but which are considered as cash under the expanded "cash" definition).	
Question #1	• ***If a BHPH dealer sells a (used) vehicle for less than $10,000, and at the same time arranges customer financing in the form of installment payments to be made to the BHPH dealer,*** ***... Are these activities two separate and distinct transactions for cash reporting purposes?*** ***... Or, do these activities constitute a single transaction (or a series of related transactions)?***	***Suggested Answer ...*** ◆ The sale of the used vehicle and the installment payments constitute a single transaction for cash receipt tracking purposes. ◆ The BHPH dealer (recipient) must aggregate the initial payment in cash and any subsequent payments in cash ***made within one year of the initial payment*** until the aggregate amount exceeds $10,000. At that time, the BHPH dealer must report (i.e., file Form 8300) with respect to the aggregate amount of cash received within 15 days after receiving the payment that causes the aggregate amount of cash received to exceed $10,000. ◆ In addition to any other required report (i.e., Form 8300), a report must be made by the BHPH dealer each time that previously unreportable cash payments made within a 12-month period by the customer individually, or in the aggregate, exceed $10,000.
Question #2	• Is the answer to Question #1 in any way affected by the exception in the Regulations [at Reg. Sec. 1.6050I-1(c)(1)(v)(B)] relating to payments received on installment sales?	***Suggested Answer ...*** ◆ No. This exception for cash received on installment sales only applies to the analysis of whether the receipt of certain monetary instruments other than cash will be treated as cash under the expanded definition of cash.
Question #3	• Does the fact given in Question #1 that the selling price of the vehicle is less than $10,000 have any bearing on the answer given?	***Suggested Answer ...*** ◆ No. The answer to Question #1 would be the same, regardless if the selling price of the vehicle was less than $10,000 or more than $10,000. ◆ The issue of whether the vehicle sold is (or is not) a "consumer durable" is not relevant in reaching this conclusion.
Question #4	• If the BHPH dealer "sells" his receivables (i.e., customers' notes) to a ***related finance company (RFC)***, how do the cash reporting requirements of Section 6050I apply with respect to the subsequent collections of cash received by the RFC as the customer makes payments on his/her note? (Sale of customer note is to an RFC)	***Suggested Answer ...*** ◆ The RFC will be required to continue to track the receipt of cash on the installment note collections to determine whether at any time, the aggregate of cash received from any customer exceeds more than $10,000 within a 12-month period. ◆ It is necessary to combine the initial sale and the period of time that the customer note was held by the BHPH dealer with the period of time that the customer note was held by the RFC. ◆ For cash receipt tracking purposes, the RFC is considered to be an extension of the BHPH dealer.

BHPH Dealers ... Cash Reporting Requirements

Question #5	• If the BHPH dealer "sells" his customers' notes under a loan servicing program arrangement to an unrelated financing source or other factor, to what extent do the cash reporting rules apply with respect to subsequent payments made by the customer on the note? (Sale of customer note is to an unrelated entity ... i.e., sale is not to an RFC)	***Suggested Answer ...*** ◆ Generally, if the purchaser has no further obligation to account to the BHPH dealer for subsequent collections on the customer's note, any previous collections of cash by the BHPH dealer can be disregarded by the purchaser of the note for purposes of Sec. 6050I reporting. ◆ However, if under the terms of the loan servicing program arrangement (i.e., the sale of the receivables by the BHPH dealer to the unrelated finance company), the customer's future performance (i.e., payments) may result in an adjustment of the sales price of the receivables, then any previous collections of cash by the BHPH dealer cannot be disregarded by the purchaser of the note. ◆ In other words, if any future payments of cash on the customer's note may be remitted or treated as an increase in the selling price of the note by the BHPH dealer to the financing source, then the cash receipts tracking by the purchaser of the note will be considered to be an extension of collections on the note by the BHPH dealer.
Question #6	• If the BHPH customer is paid by his/her employer in cash or if the BHPH customer first stops at a currency exchange to cash his/her paycheck before going to the BHPH collection office to make a payment, will the tendering of cash in the amount of the note payment due be treated as the receipt of cash by the BHPH dealer for cash receipt tracking purposes?	***Suggested Answer ...*** ◆ Yes. Cash (currency) is always cash (currency). ◆ All of the requirements regarding the tracking of cash receipts over ***any consecutive*** 12-month period will apply.
Question #7	• A customer brings in his/her paycheck (i.e., a business check issued by his/her employer) to the BHPH collection office, and the BHPH office "cashes" the customer's paycheck and gives the balance (net of the note payment due) to the customer ... Question: Is the customer considered to have paid cash to the BHPH dealer under these circumstances?	***Suggested Answer ...*** ◆ No. Under these circumstances, the employer's payroll check would not be considered to be cash. ◆ The cashing of the employer's payroll check (by the BHPH collection office) with the simultaneous tendering of cash in the amount of the installment payment due could be considered to be two separate transactions. If these were considered as separate transactions, then the employee would be paying his/her installment payment with cash. ◆ However, under these circumstances, the simultaneous transactions will not be considered to result in a payment of cash by the customer to the BHPH dealer because the origin of the cash is clearly evident.

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