



**Newsletter of the
Colorado Motor Vehicle
Dealer Board
and
Auto Industry
Division**

Dealer Board Resignation, *by Jon Kroneberger*

Effective January 1, 2006, I will be taking over as the Executive Director of the Colorado Independent Auto Dealers Association. Regretfully the December 8, 2005 Motor Vehicle Dealer Board Meeting will be my last.

I would like to thank all the Board Members for allowing me to be part of the process as it has been a

very rewarding experience. I would also like to thank the Division for their support, which I found to be essential to maximize the board's effectiveness

ROUTING BOX

Owner
Finance Manager
General Manager ✓
Sales Manager

Gene Tardy Joins the Division

Division Director Robert Sexton is pleased to announce the new Agent-In-Charge, Gene Tardy, for the Investigation Unit of the Auto Industry Division. Gene replaces Mary Marvin who retired in May of 2005.

Gene is an attorney and was in private practice for approximately 20 years. Gene was also a former police officer and an investigator for the Arapahoe District Attorney.

Changes in AID Personnel

Division Director Robert Sexton has announced some personnel changes in the Auto Industry Division.

Chuck Halberstadt has assumed the role of the Compliance and Licensing Supervisor. Debby Shriver will still be responsible for the review of new dealer applications, manufacturer and distributor applications, change of ownership and class changes. Sherry

Colborg will oversee the licensing activities for salespeople, dealer renewals, and buyer's agents.

Kaye Kopecky, Public Information Officer for the division is now the Assistant to the Division Director. Besides other duties for the director, Kaye will still be responsible for the publication of the "Wheels Newsletter", conducting the licensing seminars and background checks on original dealers and sales applicants.

WHEELS MAILING

This is a reminder that the Auto Industry Division will no longer be mailing the "Wheels Newsletter" to the dealers. For those that participated in our survey, the Wheels will be mailed to their primary location. If you would like a copy emailed to you please contact Kaye Kopecky, Assistant to the Division Director, at 303-205-5784 or send an email to dealers@spike.dor.state.co.us. Along with your email address, please provide your dealership name and dealer number.

The Wheels, past and present, are available on our webpage, www.revenue.state.co.us/dlr/home.asp.

The next edition of Wheels will be published in March 2006.

*Happy Holidays
from the staff of the
Auto Industry Division*



Find Local Tax Jurisdictions by Address

Are you a retailer who makes deliveries, but you're not sure which sales and use taxes apply? Is the delivery address in or outside the city limits? In RTD? Which county is it in?

Car Dealers: Do you need an easy way to determine which taxes apply to a purchase?

As a convenience to Colorado taxpayers, the Colorado Department of Revenue now makes links available from our Web site to companies offering online services that identify which sales and use tax jurisdictions (state, county, city, special districts) apply to any address in the state. This service will be especially helpful to businesses that make deliveries and to motor vehicle dealers.

Retailers "held harmless" for errors. If the database incorrectly identifies the tax jurisdiction, retailers who use the certified database will not be liable for sales and use taxes otherwise owed to the State of Colorado and state-collected municipalities, counties and special dis-

tricts. Important: Home-rule cities and home-rule cities and counties are generally not state-collected municipalities. These jurisdictions can, but are not required to, hold the retailer harmless in the rare case of an error in the database. For a list of home-rule cities that will hold the retailer harmless, visit the department's Web page "Certified Electronic Address Databases" at http://www.revenue.state.co.us/TPS_Dir/wrap.asp?incl=holdharmless.

Link to Companies. To see a list of companies that presently offer this service, please see our "Local Taxes by Address" Web page at http://www.revenue.state.co.us/TPS_dir/wrap.asp?incl=leavesite.

Find Local Taxes by Address at
Colorado Department of Revenue
tpspublicinfo@spike.dor.state.co.us
<<mailto:Tpspublicinfo@spike.dor.state.co.us>>

Combined From DR2395, *Karen Picariello*—Title/Registration

(formerly DR 2087 – Verification of VIN, DR 2418 – Colorado Dealer Statement Concerning an Out of State Vehicle, and DR 2411 – Application for Title/Registration)

The Titles Section has received calls concerning the DR2395, combined form. This form includes the Application for Title and/or Registration (formerly the DR 2411), Verification of Vehicle Identification Number (formerly DR 2087) and Colorado Dealer Statement Concerning an Out of State Vehicle (formerly DR 2418).

The Verification of Vehicle Identification Number portion of the new combined form contains some additional fields that did not exist on the previous single-use form. These additional fields include Width, Length, CWT, and GVW. Many of the contacts that we have received are questioning when these fields must be completed. These additional fields are only required to be completed if the information is available and/or applicable to the type of vehicle that is being inspected and titled. If the field does not apply to the type of vehicle identified on the supporting document, the field may be left blank or completed with "N/A". The State Titles Section will not reject these applications when the field is not applicable. Just as a reminder, all VIN verifications must display all four digits of the vehicle year. A reminder of this requirement is being

sent to all entities that perform VIN verifications.

In order to provide the information needed to answer the questions that we have received, we have created a job aid to be used as a guideline. The job aid is a copy of the DR 2395 form that has been completed with text in each field indicating when each specific field is required to be completed. Because the newly added fields are located in the Verification of Vehicle Identification Number portion of this form, the job aid only addresses that page of the form. There is no change in the required information on the Colorado Dealer Statement Concerning An Out of State Vehicle. The Application for Title/Registration portion of the DR 2395 combined form (formerly DR 2411) is not included in this job aid due to the many variables of information that may or may not be needed from the applicant. To obtain a copy of the job aid, please contact Karen Picariello at kpicariello@spike.dor.state.co.us.

The Combined Form DR 2395 can be used immediately and is available on the Revenue Website (www.revenue.state.co.us). However, dealers who have supplies of the single use versions of the forms, DR 2087, DR 2418, and DR 2411 may continue to use those for vehicles sold prior to April 30, 2006.



WHOLESALE CANNOT SELL RETAIL

State Statute states a wholesaler's license may be suspended or revoked for the selling or offering or attempting to negotiate the sale, lease or exchange of an interest in motor vehicles by such wholesaler to persons other than motor vehicle dealers, wholesalers or wholesale motor vehicle auction dealers. Wholesal-

ers cannot negotiate to sell or offer to sell a motor vehicle to a retail consumer and later have the paperwork completed by a licensed motor vehicle dealer.



Odometer Disclosure Requirements-Secured Forms, *Titles & Registration*

It has come to our attention that many dealerships are experiencing confusion about the use of Secured Forms since the discontinuation of the DR 2403 (non-secured odometer disclosure), and the addition of the requirement for the hand printed name of both the buyer and seller in the same vicinity as their signature to ensure full compliance with Federal Odometer Regulations.

Let's keep it simple by following the guidelines below:

- 1) ALL odometer disclosures are required to be made on a secured document.
- 2) Secured documents include: Conforming Titles (titles which allow for the odometer to be recorded and acknowledged by buyer and seller at the time of transfer), the DR 2407 (Dealer's Bill of Sale), The DR 2174 (Secured Power of Attorney), the DR 2173 (Motor Vehicle Bill of Sale), and the DR 2146 (Motor Vehicle Bill of Sale for Vehicles Abandoned at Repair Shops).
- 3) If a title is conforming and allows for dealer reassignment, the odometer disclosure should be made on the title. If the title is not available, please see item 5.
- 4) If a title is conforming, and all the assignments on the title have been used, any additional reassignments must be made on the DR 2407, Dealer's Bill of Sale **UNLESS** the title has restrictions requiring the dealership to establish title in their name prior to transfer. Examples of restricted titles would be Colorado titles requiring that the dealer in the last reassignment establish title in their name, and State of Michigan titles which do not allow reassignment by Colorado dealers and require that they establish a Colorado title in their name prior to transfer.
- 5) If the title is not available (destroyed, lost, held by lienholder, etc.), the odometer disclosure will be made on the Secured Power of Attorney, DR 2174.
- 6) The only instance where a dealer would use the DR 2173, Secured Motor Vehicle Bill of Sale, for odometer disclosure is when a customer trading in a vehicle to a dealer has a non-conforming title with no place for the odometer to be disclosed. Since the customer is not a dealer, he/she would disclose the odometer to the dealership on the DR 2173 and also sign the title. It has come to our attention that many dealerships are using the DR 2173, Motor Vehicle Bill of Sale instead of the DR 2407, Dealer's Bill of Sale. Title applications where dealers have used the DR 2173, Motor Vehicle Bill of Sale instead of the DR 2407, Dealer's Bill of Sale, will be accepted on transactions with a purchase date prior to September 16, 2005, provided that the form is filled out correctly. Any title transaction with a purchase date after September 16, 2005, will be required to submit a DR 2407.
- 7) ONLY Repair Shops, in instances where a vehicle has been abandoned at their facility, use the DR 2146.
- 8) You may continue to use the secured forms you have until your stock is depleted. We ARE NOT requiring you to use the new version of the forms at this time.
- 9) If you are using an older version of any of the secured forms that do not contain a line for the hand printed name of the buyer and seller, the hand printed name should be recorded in the same box as their signature. They can hand print their name next to, above, or directly below their signature as long as it appears in the same vicinity and is legible.

Please share this with ALL employees at your dealerships who work with secured documents, especially your title clerks!



DEALER BOARD ACTIONS

Dariush Akhbari, dba Trans Auto, Inc.-Denver-#36900 - defrauding any buyer/seller (3 counts); failure to perform written agreement (3 counts); fraudulent transaction; failure to honor check/draft to a motor vehicle auction house (2 counts); failure to deliver title. **\$100,000 FINE, FULL RESTITUTION, LICENSE REVOKED.**

Michael K. Irwin and Donald Balman, dba Irwin Automotive Group LLC-Longmont-#36349 - defrauding any buyer/seller/financial institution (33 counts); failure to honor written agreement (17 counts); failure to deliver title (10 counts). **\$300,000 FINE (\$150,000 HELD IN ABEYANCE AND THE \$150,000 FINE TO BE PURSUED AFTER RESTITUTION IS PAID TO VICTIMS), LICENSE REVOKED.**

Franklin G. Burkeen, dba Burkeen Motors-Colorado Springs-#7435 - defrauding any buyer/seller/financial institution (33 counts); fraudulent transaction (5 counts); failure to deliver title (28 counts). **\$330,000 FINE, FULL RESTITUTION, LICENSE REVOKED.**

John A. Cheyne and Clay K. Ashton, dba Americar-Colorado Springs-#37047 - fraudulent transaction (2 counts). **\$10,000 FINE (10,000 HELD IN ABEYANCE FOR FULL PAYMENT TO CONSUMER AND FINANCIAL INSTITUTION).**

International Truck & Engine Corporation-Denver-#300 - holding both a manufacture and a dealer license. **DEALER LICENSE REVOKED (GRANTED A STAY ON REVOCATION PENDING AN APPEAL).**

Nick Carranco, Salesperson - #32031 - unfitness, criminal character. **LICENSE REVOKED**

Bruce Gunter, Salesperson - #154844 - fraudulent business practice; defrauding any retail buyer/seller; violating any state or federal law respecting motor vehicles TO WIT: theft; misappropriating funds. **\$40,000 FINE, FULL RESTITUTION, RESOLVE ALL COMPLAINTS, LICENSE REVOKED.**

Ben I. Phillips, Salesperson - #154087 - fraudulent business practice (3 counts); misappropriating funds (3 counts). **\$30,000 FINE, 12 DAY SUSPENSION (\$25,000 HELD IN ABEYANCE FOR 1 YEAR PROBATION), NO TRANSFER OF LICENSE WITHOUT PRIOR BOARD APPROVAL.**

Sean Mangum, dba Signature Motors LLC - Englewood - #36366 - failure to honor written agreement (16 counts); defrauding any buyer/seller or financial institute (24 counts); failure to honor a check/draft to a motor vehicle dealer (2 counts) failure to deliver title (8 counts). **\$140,000 FINE; FINE TO BE REDUCED AFTER RESTITUTION IS PAID TO VICTIMS; LIFETIME REVOCATION.**

Colorado State Sales Tax on Gap Protection, *Bruce Nelson, Manager – Tax Policy*

Gap Protection, also known as the “Total Loss Protection Plan,” is an insurance policy that guarantees full payment to the lien holder in the event a policyholder’s motor vehicle is deemed a total loss, or if the policyholder defaults on the vehicle loan. Just as with maintenance agreements or extended warranties, the sale of Gap Protection is a non-taxable service sale if it sold to the customer as a separate item, and the customer has an option to purchase the vehicle without buying the Gap Protection. If the customer must buy the Gap Protection in order to purchase the vehicle, the Protection is deemed part of the purchase price and subject to sales tax.

Colorado statutes impose sales tax on the full purchase price which includes all tangible personal property and services provided “in connection with” the sale. See §39-26-102(12), C.R.S. Consistent with this statute, the Department has generally held that all costs that make up the purchase price at the point at which title passes are usually considered part of the purchase price

and included in the computation of the sales tax. On this basis, the Department has required the car dealer to calculate the sales tax with Gap insurance included because the insurance cost was part of the cost that constituted the purchase price prior to passage of title.

However, the Department has reconsidered its interpretation and application of purchase price in light of the Colorado supreme court’s decision in *A.D. Store v. Department of Revenue*, 19 P.3d 680 (Colo. 2001). There, the court held that a non-taxable item should not be included in the purchase price (for purposes of calculating sale tax) if the item is “separable” from the transaction. Having reviewed Gap insurance in light of this case, we conclude that GAP insurance, as so far as described herein, is “separable” from the sale of the motor vehicle and, therefore, the insurance should **not** be included in the purchase price for purposes of calculating the sales or use tax.



Abandoned Vehicle Applications, *Alma Lamas - Titles & /Registration*

The State Title Section Audit & Compliance Unit has identified an increase in a number of errors on Abandoned Vehicle applications. The following will address a specific error that has become frequent.

Issue: When a tow carrier is selling the vehicle through a Colorado dealership, the dealership is taking title.

CRS 42-4-2104 (1) (a) states that the sale of the abandoned vehicle shall be made through a motor vehicle dealer or wholesaler, or wholesaler motor vehicle auction dealer licensed in accordance with section 12-6-108, CRS, or through a classified newspaper advertisement published in Colorado.

Therefore, in this situation the dealership can not establish title in their name, but must transfer ownership of the abandoned vehicle on the DR2407 Dealer Bill of Sale. When a vehicle is sold by a tow carrier through a licensed dealer, wholesaler or auction, the tow carrier will provide the dealer the DR2008A, DR2173 and the VIN verification. The DR2173 will show the tow carrier as the seller and the dealer as the buyer. The dealer then provides the buyer with the paperwork from the tow carrier and the DR2407. The DR2407 will show the dealer as the seller and the individual or company that is purchasing the vehicle as the buyer.

Reminder to Dealers

All AID forms are available on our website and can be downloaded; however, when submitting these forms make sure that you fill them out thoroughly and accurately and provide the correct number of copies.

Besides obtaining all AID forms, our website contains other written material regarding the Auto Industry Division. Please check out our Internet home page website at www.revenue.state.co.us/dlr/home.asp. You may also email our Assistant to the Division Director at dealers@spike.dor.state.co.us with any questions or concerns.

DEALER BOARD MEMBERS

President, Gretchen Olson

First Vice President, Jeff Carlson

Second Vice President, Jim Varner

Bob Feder, Steve Perkins, Lisa Schomp,

Dale Spradley, Mark Striegnitz

Executive Secretary, Robert C. Sexton

AUTO INDUSTRY DIVISION

Division Director, Robert C. Sexton

Assist. to the Division Director, Kaye Kopecky

Agent-In-Charge, Gene F. Tardy

Compl. & Licensing Supervisor, C. Halberstadt

Correspondence is welcome. Address to:

Auto Industry Division

1881 Pierce Street, Lakewood, CO 80214

Phone: (303) 205-5604 FAX: (303) 205-5977

E-mail: dealers@spike.dor.state.co.us

Internet: www.revenue.state.co.us/dlr/home.asp

C A L E N D A R

Dealer Board Business Meeting: Second Thursday of each month at 9:00 am, 1881 Pierce St, Lakewood.

Dealer Board Hearings: Fourth Thursday of each month, if necessary, at 9:00 am, 1881 Pierce St, Lakewood.

License Law Seminar - Colorado Springs: First Tuesday of each month at 10:00 am, 4420 Austin Bluffs Pkwy, Colorado Springs.

License Law Seminar - Ft Collins: BY APPOINTMENT ONLY, Second Wednesday of each month at 10:00 am, 1121 W Prospect Road, Ft. Collins

License Law Seminar - Lakewood: Third Tuesday of each month at 9:00 am, 1881 Pierce St, in the Department of Revenue Building, Lakewood.

Note: Times and locations are subject to change.

Call the Auto Industry Division at (303) 205-5784.

Please note: While every effort is made to make the information in *Wheels* as accurate and helpful as possible, it is not offered as a substitute for legal advice.