

INDEPENDENT CONTRACTOR OR EMPLOYEE?

How and when a licensed salesperson can use dealer tags is a function of their employment status with your dealership. If you file an IRS form "W-2" for the sales staff who work for your dealership at least 25 hours per week on a regular basis, he/she are considered "employees" and are therefore entitled to use and drive on dealer tags.

If, on the other hand, a salesperson files their own taxes using an IRS form "1099", they may be considered an "independent contractor" rather than an employee. If the salesperson is an independent contractor, they can only use dealer tags under very limited situations and only if a "PERMISSION TO USE DEALER'S LICENSE PLATES" form (DSD-27) is issued. In fact, for the purposes of determining the number of dealer tags, you are entitled to be issued; independent contractors should not be considered. Only "employees" can be considered or counted when determining how many dealer plates can be issued to a dealer. Please see p. 4 for IRS Guidelines on determining if an individual is an employee or an independent contractor.

INSIDE THIS ISSUE:

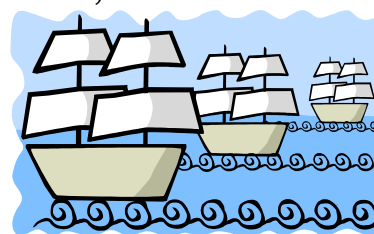
1. INDEPENDENT CONTRACTOR
1. HOLIDAY SCHEDULE
2. CURBSTONING REPORT
2. CALENDAR OF EVENTS
3. ACTIONS FROM JULY BOARD MTG.
4. IRS PUBLICATION 1779
5. WELCOME NEW DEALERS (MAY)
6. WELCOME NEW DEALERS (JUNE)
7. HELPFUL TIPS AND REMINDERS
7. WELCOME NEW BOARD EMPLOYEE

State Holiday for the Month of September
Our Office will be closed on
September 3, 2001 in observance of:



LABOR DAY

State Holiday for the Month of October
Our Office will be closed on
October 8, 2001 in observance of:



COLUMBUS DAY

CURBSTONING REPORT

- Since the last Dealer Board meeting, DMV Special Agents and Dealer Board Representatives have issued 265 curbstoning notices.
- In Salem, a citizen complaint was received regarding vehicles being displayed for sale at a garage. A DMV Special Agent interviewed the garage owner, who claimed he also owned the "for sale" vehicles. The individual was given a verbal warning that his activity may be in violation of the Dealer Licensing Laws, and advised him to discontinue. He indicated he planned to apply for a dealer license.
- In Roanoke, a Special Agent observed several vehicles being displayed for sale at a residence. A resident of the property stated the City had ordered him to remove the vehicles or he would be charged with violating a city ordinance. The vehicles were essentially junk, and the individual had advertised them for sale in an attempt to get them removed from the property. Neither DMV records nor the Special Agent's investigation revealed any suspicious vehicle purchases or sales. No further action was taken.
- In Dickenson County, a curbstoner was fined \$290, and warned that any subsequent vehicle sales activity would result in a much stiffer penalty.
- In Stafford County, vehicles are frequently displayed for sale in a vacant lot owned by a real estate company. Plans are currently underway to develop the property, which should help alleviate future curbstoning.
- In Spotsylvania County, Union Bank and Trust – another frequent curbstoning location – is installing signs to indicate that vehicles being displayed for sale will be towed at the owner's expense. The bank has also contracted with a towing company for the removal of vehicles.

DEALER TALK

A Bi-monthly newsletter of The Virginia Motor Vehicle Dealer Board

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NOTE: We make every effort to ensure information in *Dealer Talk* is accurate, but it is not a substitute for legal advice.

Calendar of Events

**All Meetings held at DMV Headquarters
2300 W. Broad Street, Room 702, Richmond, VA**

Monday, September 10, 2001:

Time: 8:30 a.m.

Dealer Practices Committee Meeting

Monday, September 10, 2001:

Time: 5 Minutes after Dealer Practices

Franchise Law Committee Meeting

Monday, September 10, 2001:

Time: 10:00 a.m.

Licensing Committee Meeting

Monday, September 10, 2001:

Time: 5 Minutes after Licensing

Advertising Committee Meeting

Monday, September 10, 2001:

Time: 5 Minutes after Advertising

Personnel Committee Meeting

Monday, September 10, 2001:

Time: 1:00 p.m.

Transaction Recovery Fund Committee Meeting

Monday, September 10, 2001:

Time: 5 Minutes after Transaction Recovery Fund

Finance Committee Meeting

Monday, September 10, 2001:

Time: 1:45 p.m.

Full Board Meeting

NOTE: Meetings may begin later, but not earlier than scheduled.

ACTIONS FROM THE JULY BOARD MEETING

Dealer Practices: After reviewing the evidence and the report of a hearing officer, the Board levied a civil penalty totaling \$14,500 on a Richmond area dealer for a number of violations. This case started when the Board's executive director received an anonymous telephone call from a dealer in reference to "in-line" advertisements placed in the Richmond Times-Dispatch by a dealer who failed to identify himself as a dealer in the advertisements. A "sting" type operation conducted by the Board staff resulted in a number of allegations including failing to identify in an advertisement the name of the dealership or "VA DLR"; selling vehicles from a location other than the licensed location; misuse of dealer tags; compensating an individual in connection with the sale of an automobile who is not licensed; and having used deceptive acts and practices.

The dealer will have 33 days to either pay the \$14,500 civil penalty or appeal the Board's decision to circuit court. Failure to pay the penalty or file an appeal will result in the immediate revocation of the dealer's license.

Salesperson's License: The Dealer Board revoked the license of an Alexandria area salesperson for selling a motor vehicle for a dealer other than the dealer for which he was licensed and for having used deceptive acts or practices. The salesperson had advertised a vehicle for sale in the Washington Post and did not identify in that advertisement that the car was being sold by/through a dealer. The advertisement included the salesperson's personal telephone number and the vehicle was shown at his residence. The car was sold using the bill of sale from dealer "A". However, at the time of the sale, he was licensed as a salesperson for dealer "B". The salesperson purchased vehicles with his own funds and had an arrangement with the owner of dealer "A" to run these sales through this dealership and in turn, the salesperson paid dealer "A" a fee. (Dealer "A" has also been the subject of a hearing that should be reviewed by the Board in September.)

The salesperson will have 33 days to either surrender his license or file an appeal with the circuit court.

ACTIONS FROM THE JULY BOARD MEETING

Application for a Salesperson's License: The Board reviewed the report of a hearing officer and other documents and listened to the testimony of an applicant for a salesperson's license. Previously, the Board's executive director had denied the application after running a criminal background check and discovering that the applicant had two felony convictions. In addition, the applicant also had a misdemeanor odometer tampering conviction. The applicant had answered "NO" to questions on the application form concerning felony convictions and odometer tampering convictions. Based on his criminal history and material misstatements on his application, the Board denied his application for a salesperson's license.

Salesperson's License Revocation: The salesperson's license of a Hampton/Newport News individual was revoked by the Board after a formal hearing for defrauding a consumer and for deceptive acts or practices. The salesperson will have 33 days to either surrender his license or file an appeal with the circuit court.

Advertising: Two dealers were assessed civil penalties for repeated violations of the dealer advertising laws and regulations. In each of these cases, the Board agreed with the findings and recommendations of a hearing officer.

In the first case, a Shenandoah Valley area dealer was assessed a \$500 civil penalty for "Sale End Date" violations. In the second case, another Shenandoah Valley area dealer was found in violation of the "Truth in Lending" regulations and was assessed a \$500 civil penalty.

IRS Publication 1779 (Rev. 12/99)

Which are you? For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now.

The courts have considered many facts in deciding whether a work is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: behavioral control; financial control and relationship of the parties. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions.

Behavioral Control. These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an **employee**. Instructions can cover a wide range of topics, for example:
 1. how, when, or where to do the work
 2. what tools or equipment to use
 3. what assistants to hire to help with the work
 4. where to purchase supplies and services.

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

Financial Control. These facts show whether there is a right to direct or control the business part of the work. For example:

- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.

IRS Publication 1779 (Rev. 12/99)

- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

Relationship of the Parties. These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.
- **Written Contracts** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

When You Are An Employee. Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, Wage and Tax Statement, showing the amount of taxes withheld from your pay.

You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.

When You Are An Independent Contractor. The business may be required to give you Form 1099-MISC, Miscellaneous Income, to report what it has paid to you.

You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act-SECA). The business does not withhold taxes from your pay.

You may need to make estimated tax payments during the year to cover your tax liabilities. You may deduct business expenses on Schedule C of your income tax return.

If you are still unsure whether a salesperson is an employee or an independent contractor, the IRS can help you make that determination. Contact the IRS toll free at 1-877-233-6767 to request the form SS-8, Determination of Employee Work Status for Purpose of Federal Employee Taxes and Income Tax Withholding. IRS Publication 15-A, Employer's Supplemental Tax Guide, provides additional information on independent contractor sales. IRS forms and publications can also be downloaded and printed from the IRS web site (www.irs.gov).

WELCOME NEW DEALERS!

The Motor Vehicle Dealer Board formally welcomes the following new dealers for May & June! Should you have comments, suggestions or questions, please do not hesitate to contact the staff of the Dealer Board. Our telephone and FAX numbers, mailing address and e-mail address are all listed on Page 2.

MAY	
Lake Auto Sales 3510 Highway 903, P.O. Box 848 Bracey, Virginia 23919	Hall Nissan-Chesapeake 3412 Western Branch Boulevard Chesapeake, Virginia 23321
Hall Chevrolet 3412B Western Branch Boulevard Chesapeake, Virginia 23321	Sadler Auto Center of Franklin 125 South College Drive Franklin, Virginia 23851
Victory Nissan of Richmond, Inc. 8903 West Broad Street Richmond, Virginia 23294	Auto King 18506 Jefferson Davis Highway Triangle, Virginia 22172
G R's Cars 901 Main Street Smithfield, Virginia 23430	Southampton Motors, Inc. 27444 Southampton Parkway Courtland, Virginia 23738
58 Motors 28130 Southampton Park, P.O. Box 219 Courtland, Virginia 23837	Hughs Motorcars 318 Broadview Avenue Warrenton, Virginia 20186
Red Star Auto Sales 810 N. Pollard Street Arlington, Virginia 22203	Iron Horse Auto Sales, Inc. 339 W. Washington Street Bedford, Virginia 24523
Russell Brooks Body Shop 1711 E. Lee Highway Chilhowie, Virginia 24319	Storman Norman Auto Sales, Inc. 3208 N. George Washington Highway, #A Portsmouth, Virginia 23704
Ron's Motors Route 67, P.O. Box 421 Swords Creek, Virginia 24649	Ridgeway Tire & Auto LLC 7394 Greensboro Road Ridgeway, Virginia 24148
AutoMaxx Staunton, L.L.C. 353 Lee Jackson Highway Staunton, Virginia 24401	Deals on Wheels 1095 Radford Street Christiansburg, Virginia 24073
Star Motor Cars 3799-B Jefferson Davis Highway Stafford, Virginia 22554	Auto America 14538 Jefferson Davis Highway Woodbridge, Virginia 22191
Rigsby Towing & Recovery, LLC 5421 Brook Road Richmond, Virginia 23227	Thermo King Mid Atlantic, Inc. 12216 Washington Highway Ashland, Virginia 23005
Sterling Auto Sales 46970 Community Plaza, #107 Sterling, Virginia 20164	Williamson Road Motors, Inc. 4714 Williamson Road, N.W. Roanoke, Virginia 24012

MAY (continued)

Bay Breeze Auto Broker, Inc. 1601 East Little Creek Road Norfolk, Virginia 23518	T N T Auto Sales Enterprises, Inc. 940 E. Little Creek Road Norfolk, Virginia 23518
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JUNE

International Motors, LTD 624 S. Washington Street Falls Church, Virginia 22046	Miller Toyota 8500 Sudley Road Manassas, Virginia 20110
Parkway Auto Sales Highway 460 West, P.O. Box 702 Appomattox, Virginia 24522	D L Motors, Inc. 933 E. Little Creek Road Norfolk, Virginia 23518
Smiley's Used Cars & Trucks 609 Phoebe Pond Road, P.O. Box 541 Concord, Virginia 24538	Lakeside Auto Connection 22676 Greensprings Church Road Abingdon, Virginia 24211
Delaware Auto Leasing, Inc. 5700 Curlew Drive Norfolk, Virginia 23502	River Road Service 230 River Road Farmville, Virginia 23901
Abingdon Motors, LLC 550 West Main Street Abingdon, Virginia 24210	Rogers Auto Sales 317 Boulevard Colonial Heights, Virginia 23834
Carl's Auto Sales 2001 K-V Road Victoria, Virginia 23974	H B L, Inc. 8545 Leesburg Pike Vienna, Virginia 22812
J & R Auto Sales 6626 Ivanhoe Road Ivanhoe, Virginia 24350	Key-It-Up Auto Sales 1905 Holland Road Suffolk, Virginia 23435
Horizon Equipment Rentals 2805 Carrollton Pike Woodlawn, Virginia 24381	Holleys Used Auto Parts, Inc. 4443 Franklin Street Rocky Mount, Virginia 24151
A A Import & Export, Inc. 5700 Curlew Drive Norfolk, Virginia 23502	Creek Auto Sales 11372 Blue Star Highway Stony Creek, Virginia 23882
Auto Station 6707 Fayette Street #7, P.O. Box 165 Haymarket, Virginia 20168	Checkered Flag Auto 2425 South Main Street Harrisonburg, Virginia 22801
Dale Old Wholesale 316 Progress Drive Chesapeake, Virginia 23322	Chesapeake Auto & Truck 3116 S. Military Highway Chesapeake, Virginia 23323
Mobile Wholesalers, Inc. 4847 Virginia Beach Boulevard Virginia Beach, Virginia 23462	Poquoson Auto Wholesale, Inc. 487 Wythe Creek Road Poquoson, Virginia 23662

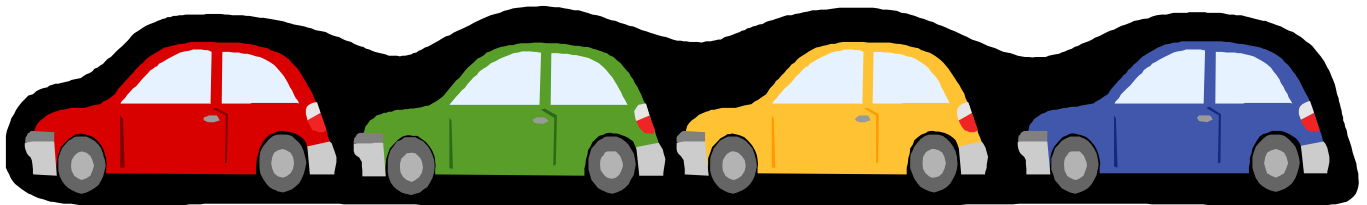
JUNE (continued)

Harpersville Motor Company 147 Harpersville Road Newport News, Virginia 23601	B & S Auto Sales 24204 Drake Road Abingdon, Virginia 24211
Midcity Motors, Inc. 2230 High Street Portsmouth, Virginia 23704	Donna's Auto Sales Route 1, Box 341-C Cedar Bluff, Virginia 24609

HELPFUL TIPS AND REMINDERS

Forms: If you need DMV or Motor Vehicle Dealer Board issued forms, please send your requests (It is always best to use the "Dealer Request for DMV Forms" (DSD 36) when requesting forms.) to the Motor Vehicle Dealer Board by FAX at 804-367-1053, or by mail to 2201 West Broad Street, Suite 104, Richmond, VA 23220 or by e-mail to dboard@mvb.state.va.us. You can also download and print forms from the Motor Vehicle Dealer Board's WEB site (www.mvdb.vipnet.org) or from DMV's WEB site (www.dmv.state.va.us).

E-Mail Distribution List: We have recently added a new communication tool that we can use to communicate with dealers and others. You can now subscribe to our free, e-mail distribution list. Simply go to our WEB site (www.mvdb.vipnet.org) and click on the "Dealer/Salesperson Info" button. You will then see a button that you can click on to become an e-mail subscriber. We will use this distribution list to send you items of interest.



WELCOME NEW DEALER BOARD FAMILY MEMBER

The Motor Vehicle Dealer Board is proud to announce our newest family member, Angel Miller. Angel, her husband and their daughter, recently relocated back to the Richmond area in January from Northern Virginia, where she worked for DMV for four years while attending George Mason University. After graduating in 1997 with a BA in Sociology, she was employed by Landmark Honda in Alexandria, VA for 2½ years as a tag and title clerk. After the birth of her daughter, she worked part-time at DMV and then as a tag and title clerk for Rosenthal Chevrolet for about a year. With her background of DMV and dealer knowledge, we just may have the best of both worlds.

ATTENTION ALL DEALERS:

Inside this issue, please read about the following:

- 1. INDEPENDENT CONTRACTOR OR EMPLOYEE?**
- 2. HOLIDAY SCHEDULE**
- 3. CURBSTONING REPORT**
- 4. CALENDAR OF EVENTS**
- 5. ACTIONS**
- 6. IRS PUBLICATION 1779**
- 7. WELCOME NEW DEALERS**
- 8. HELPFUL TIPS AND REMINDERS**
- 9. WELCOME NEW DEALER BOARD MEMBER**