

Motor Vehicle Advisory Board 1/20/15

Those in attendance were:

John Beutler, Advisory Board Member
David Morris, Advisory Board Member
Chris Mantas, Advisory Board Member
John Watson, Advisory Board Member
John Valentine, Tax Chair, Tax Commission
Michael Cragun, Commissioner, Tax Commission
Curtis Stoddard, Assistant Director, MVED
Jenny Stanger, Office Manager, MVED

Greg Miller, Chair, Advisory Board Member – Absent
Kent Jorgensen, Director, MVED – Absent

John called the meeting to order at 2:01 PM. Greg Miller was absent so John Beutler lead the meeting.

There was no public comment.

Commissioner Michael Cragun provided the Open & Public Meetings Act annual training. There were a few minor changes from last year thus the updated date on the electronic media file. One of the changes since last year is that any electronic media file used during the meeting will become a permanent part of the meeting records.

The proposed dates for the Advisory Board meetings are:

Monday April 20, 2015 at 2:00 PM
Monday August 17, 2015 at 2:00 PM
Monday October 19, 2015 at 2:00 PM
Tuesday January 19, 2016 at 2:00 PM

Jenny Stanger explained that meetings have typically been held on the 3rd Monday of each quarter with the exception of January, due to the holiday. January's meeting has been held on a Tuesday. Also some of the board members asked that the July meetings be pushed to August due to summer scheduling conflicts. John Beutler asked for a motion to approve the proposed meeting dates. John Watson made the motion to approve. Chris Mantas seconded. All board members approved the dates.

Curtis Stoddard brought a few members of sales tax into the meeting for a question that John Beutler had. John Beutler stated there is confusion amongst the dealers on how to handle the trade in on a lease vehicle. John Beutler explained that a trade in for a lease vehicle should not receive full value trade due to the lease and he believes there are some dealers allowing full value trade. He asked if sales tax has seen this as a problem. James Shaw from Taxpayers Services stated they have not seen that problem on their end. Publication 5 also addresses that situation. A lease vehicle must have the lease bought out by

the lessee, before they can trade in the vehicle and obtain full value trade. John Watson asked how they would investigate that if there were a problem? Jeff Christiansen Assistant Director of Tax Payer Services stated that this would have to be handled by an audit function. Jeff Christiansen said they can try to assist in educating the public with Publication 5. John Beutler stated they aren't interested in finding out through an audit but asked more information about Publication 5. James Shaw stated that Publication 5 is available at www.tax.utah.gov under forms and publications. John Watson stated on the new car dealer side this is part of their annual training. If one dealer does it appropriately and another dealer does not then the dealer who does it inappropriately has the advantage. He also believes education is the best way to handle this. John Beutler stated the used car association will also make this as a topic for their annual training. Jeff Christiansen stated they can also forward information to the auditing division. James Shaw read information from publication 5 that states a customer who trades in a leased vehicle must first purchase the vehicle and pay any sales or use tax applicable to that purchase before he can receive a trade in credit.

John Watson had a few dealers contact him about advertising violations. He is aware there are penalties when laws are violated. Curtis Stoddard stated Commerce may have some ad violations in addition to MVED. MVED would impose penalties on anything in 41-3-210 or R877-23V-7. John Watson stated there is an escalation clause in the fine amounts. The comment that was disturbing to him was the ones that are the most blatant about violations are saying it is a cost of doing business. He feels like that makes the playing field a little unlevel. John Watson is just wondering after a certain length of time and for someone that has no regards for the punishment could more teeth be put into it? Curtis Stoddard stated the 1st offense is \$250, the 2nd offense is \$1,000 and the 3rd and subsequent are \$5,000 within a 12 month period. You have to remember there are smaller dealers that this also applies to. A \$5,000 fine could put a little guy out of business. He stated we do hear periodically that it is a cost of doing business. But usually by the third violation their violations stop. Curtis Stoddard said we are open to changes in this and Commissioner Cragun could help in this matter.

Curtis stated we have a few rules that are not enforceable until we receive a complaint. If those are truly things that the industry doesn't want said, then change the rule so we don't need proof on those. John Watson asked in order to take action they would have to bring in something? Curtis Stoddard stated yes the consumer would have to bring in written documentation that a particular claim of a lower price really wasn't true. But the consumers don't file a complaint in regards to that as they just go to the dealer that gives them the lower price. John Watson stated he just needed more information to take back to the dealers that were asking about this and now he has that. Curtis Stoddard stated he didn't feel like the penalty needed to be addressed. The Commissioners can decrease the fine amount but not lower than the lowest level of \$250. Commissioner Cragun explained that a rule could be amended. They have to have a draft amendment from the Board, that would be voted on in a public meeting held by the Commissioners, it would then be sent to the Division that regulates Rules. There is a 30 day public comment period. The Commission has to wait another 7 days and then they can amend the rule or let the proposal die. So it actually takes about 45-60 days to change a rule. It doesn't have to come from the Motor Vehicle Advisory Board. It could come from the New or Used Car Associations. No matter where it comes from, Commissioner Cragun stated he believes they would ask for the Board to give their opinion. In order to do that it would have to be on the Motor Vehicle Advisory Board agenda as an action item.

John Beutler stated some of the used car dealers do not want to have to list destination fees in their advertising. It may be easier to sell a car at \$10,500 with a \$200 destination fee versus \$10,700. Curtis Stoddard stated one of the complaints we get the most are about fees that are added onto the price of the vehicle. He felt like we may get more complaints if the destination fees don't have to be included. John Beutler stated maybe the easiest way to explain the reason is that destination fee would vary from vehicle to vehicle, where a documentation fee is generally charged at the same rate to every customer. John Watson believes typically the destination fee is worked into the price of the vehicle. Curtis Stoddard stated that there is still an ongoing class action lawsuit in regards to the documentation fees. He believes that is being heard in Davis County Courts. Michael Cragun stated that they are welcome to submit rule changes to the Commission. They have a time for public comment at each of their meetings. If they want to be heard they can be heard.

Craig Bickmore asked to be called during the meeting and he is now on the line. John Beutler stated the Motor Vehicle Advisory Board is going to table the brokering discussion they have been having. He asked Craig Bickmore to bring it up again if they want to pursue it at another time. Craig Bickmore stated there are some franchise issues that are going to come up in the upcoming legislation session. John Beutler asked Craig to advise the Board if anything that is an emergency comes up.

John Beutler asked for a motion to adjourn. Chris Mantas made the motion to adjourn. John Watson seconded. All other board members agreed. Meeting was adjourned at 3:01 PM.