11th Annual CFO/CEO Forum

NAVIGATING THE ROADMAP TO REGULATORY COMPLIANCE

Auto Team America will hold their 11th annual CFO/CEO forum on Friday, January 28, 2005, preceding the start of the NADA convention in New Orleans. The forum will be held from 3:00-6:00 p.m. at the Sheraton Hotel, with a cocktail reception immediately following sponsored by Comerica.

This year's theme is *Navigating the Roadmap to Regulatory Compliance.* The rapidly changing regulations that dealers are struggling to comply with will be the focus of the forum. Topics will include the Fair and Accurate Credit Transactions (FACT) Act, financial privacy, a telemarketing update, the CAN-SPAM Act, FCC fax advertising rules, Office of Foreign Assets Control (OFAC) restrictions and more.

The forum will also address how dealers can take advantage of the Federal Arbitration Act, spot delivery issues, tax issues and the use of comprehensive checklists in the sales process in order to avoid non-compliance with the myriad of regulations facing dealerships today.

Speakers for this year's event include **Paul Metry, Esq**., NADA Director of Regulatory Affairs, and **Jeff Roberts, Esq.,** Partner, Underwood and Roberts PLLC. ATA is excited to have nationally renowned speakers this year to discuss current issues of the automotive retailing industry.

Paul D. Metry, Esq. is the Director of Regulatory Affairs in the Legal and Regulatory

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REAL ESTATE GIFTING: A VALUABLE TAX PLANNING TOOL FOR DEALERS

Under current tax law, every individual has a $1 million lifetime gift exemption. For married couples, the lifetime gift exemption doubles to $2 million. This exemption, combined with the use of valuation discounts, provides auto dealers the ability to transfer real estate to a family LLC or partnership at little or no tax cost.

A family LLC can be created with the dealer and/or spouse as the managing member. Real estate can then be transferred to the LLC, and the dealer can gift member interests in the LLC to their children or other family members.

There are many benefits in utilizing this widely-used estate planning tool, including:

The ability to transfer value, but retain control over the real estate. In an LLC, you can separate the management of the LLC from the ownership. The designation of a *managing member* allows the dealer to continue the management and control over the property—even though they may not own a large portion of the LLC.

The other *members* own the LLC interest, but you can limit their ability to participate in the management, sell their interest, and restrict transfer of their interest. In addition, creditors may not attach the underlying assets in the LLC, only the future earnings.

Valuation discounts provide the ability to transfer real

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Group of the National Automobile Dealers Association. He represents dealer interests before several federal agencies, including the Federal Reserve Board, Federal Trade Commission, Federal Communications Commission, Department of the Treasury and the Internal Revenue Service. In addition, he educates dealers on the regulations passed by these federal agencies. Mr. Metry is a frequent speaker to dealers on an array of regulatory topics, including recent developments in the area of privacy, telemarketing, consumer financing and taxation.

Jeffery G. Roberts, Esq. is a Partner with the law firm of Underwood and Roberts PLLC. The firm represents a large contingent of successful and dynamic retail automotive dealers in the country. Jeff counsels his clients regarding all aspects of their business, including commercial and consumer transactions, regulatory compliance, factory relations, tax and business planning, employment responsibilities and debt and equity finance opportunities. Jeff is a frequent speaker to dealers and dealer support organizations.

Attendees of the forum will include CFO's/CEO's of dealership groups, dealers and general managers, controllers and office managers, and related industry associates involved in dealership business management. To request an invitation to attend, please contact your local Auto Team America member firm.

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estate to the LLC at a value significantly less than its fair market value—generating significant tax benefits. Due to lack of control and marketability by the family members, the membership interest values are discounted from the actual fair market value.

The average discount on a family real estate LLC could be as much as 30-40%. For example, assume that the real estate you own under your dealership is valued at $4,000,000 and that a discount of 40% is determined to be appropriate. Additionally, assume you and your spouse have not used any of your lifetime exemption and you gifted 80% of the LLC interest to your family and retained 20% for yourself. The $4,000,000 real estate value would have a discounted value of $2,400,000.

Since you are gifting 80%, or $1,920,000 of value, and the first $2 million can be covered with your lifetime exemption, the interests in the LLC could be transferred to your family without incurring any current gift tax costs.

Transfer of future property appreciation out of your estate. By gifting the property now at current discounted values, all future appreciation in the property is transferred out of the estate. Assuming average annual appreciation in commercial real estate at 5%, there could be substantial estate tax savings.

Consider the following:

- *Fair Market Value (FMV) of real estate in 2004: $4,000,000*
- *Estimated FMV in 2014: $6,200,000*
- *Appreciation transferred out of estate: $1,750,000*

At an estate tax rate of 48%, the tax savings on the appreciation alone would be $840,000.

Inclusion of all children in estate and gift planning. The transfer of the dealership real estate to the family LLC allows children who do not wish to work in the business an opportunity to benefit from the appreciation in the real estate. This provides the flexibility to allow those children to receive non-controlling gifts of real estate. At the same time, it still allows similar gifting possibilities of dealership ownership to children who desire to enter the family's business and perhaps even succeed to the position of dealer.

Administration of family LLCs require careful planning and management. Family LLCs require formal agreements and legal documentation, as well as other administrative actions, in order to be effective.

To avoid recharacterization by the IRS, family LLCs must operate as a separate entity from the dealer and/or family and should be run as such. Establishing fair market value rent, setting up a different bank account and delegating management duties will help sustain this separation. It is important to get an accredited appraisal to support your valuation and gifting strategy.

The family LLC has proven to be an effective estate planning mechanism and provides the family with many long-term benefits, both financially and personally. The correct setup of a family LLC is extremely important because of IRS scrutiny. For additional information on family LLCs, contact your local Auto Team America firm.

QUICK CHECK

Start out 2005 on the right foot. Randomly audit your Information Security Program for any risks of exposing confidential customer information.

Check the copier and fax areas, printers, trash cans, and desks. What types of customer information do you see?

Contact your local Auto Team America firm for assistance in implementing or auditing your dealership's Information Security Program.

TAX TIP

ADEQUATE DISCLOSURE ON ITEMS TO REDUCE PENALTY

The IRS has updated the procedure identifying the circumstances under which the disclosure on a taxpayer's return with respect to an item or position is adequate for purposes of reducing the penalty for understatement of income tax and avoiding the accuracy related penalty.

The IRS has clarified that, if a taxpayer discloses an item on a line or schedule that does not have a preprinted description identifying that item, the item must be properly described on that line.

The information provided must reasonably apprise the IRS of the nature of the potential controversy concerning the tax treatment of the item. If the information does not apprise the IRS, a Form 8275, Disclosure Statement, must be used to adequately disclose the item. The relevant facts affecting the item's tax treatment will be considered adequately disclosed and there will be a reasonable basis for the tax treatment of the item by the taxpayer.

A substantial understatement of income tax results where the amount of the understatement exceeds 10 percent of the amount of tax required to be shown on the return for the taxable year or $5,000 ($10,000 in the case of a corporation other than an S Corporation).

This procedure applies to any return filed on 2004 tax forms for a tax year beginning in 2004.