

15th Annual CFO/CEO Forum

REBUILDING THE MODERN DEALERSHIP: NEW TRENDS IN A CHANGING MARKETPLACE

Auto Team America will hold its 15th annual CEO/CFO forum on Friday, January 23, 2009, preceding the start of the NADA convention in New Orleans. The forum will take place from 3:00 pm – 6:00 pm at the New Orleans Marriott. Immediately following the event will be a cocktail reception hosted by Comerica Bank exclusively for the forum attendees.

As our industry feels the strain of a turbulent economy, it is more important than ever to understand the shifting marketplace. We've invited two local business leaders, who know a thing or two about rebuilding, to join us as keynote speakers. The vibrant re-opening of the Superdome for the first football game of the 2006 season was an unforgettable event, and stands as a tribute to the city's resilience and

the relentless work of General Manager Doug Thornton and his staff. Mat Baer, CFO of the locally-based Bohn Brothers Investments, will share his company's disaster recovery efforts in the face of unprecedented circumstances.

Our panel of experts, moderated by Jay Ferriero, will share their perspectives on today's auto business. We are thrilled to welcome panelists Loyd H. Rawls of The Rawls Company, Erich J. Merkle of Crowe Horwath, Richard N. Sox, Jr. of Myers & Fuller, P.A., Sheldon J. Sandler of Bel Air Partners, and Tom Hessert, Jr. of Classic Auto Group.

Doug Thornton, General Manager and Vice President, The New Orleans Superdome, serves as Senior Vice President for SMG, a Philadelphia-based facility

management company, following 3 years as Regional Vice President for SMG and eight years as General Manager of the Louisiana Superdome and the New Orleans Arena. After Hurricane Katrina, he was the "point man" for the biggest rebuilding project of a stadium in American history. Doug and the SMG Staff were presented a 2007 Sugar Bowl Hall of Fame Award for their efforts in the Superdome's recovery.

Mat Baer, Chief Financial Officer of Bohn Brothers Investments, joined the organization, with LA and TX dealerships and real estate interests, as its first CFO in 1996. In 1999, he assisted with the sale of several Bohn dealerships to Group 1 Automotive (GPI). Mat subsequently served as the CFO of

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THE IRS MAY HAVE A NEW VIEW OF UNICAP

Dealers are subject to the Internal Revenue Code Sec. 263A uniform capitalization (UNICAP) rules. These rules call for additional indirect costs to be capitalized into inventory that would not normally be capitalized under the traditional Sec. 471 full absorption cost accounting provisions. As a result, dealers may be required to treat certain costs as inventory costs that would otherwise be deducted as incurred. The typical inventory related costs that might be capitalized are purchasing, handling and storage. Over the last several years, we have advised many of our clients to adopt specific, simplified UNICAP methods. The use of these methods and meeting certain safe harbors can result in a zero

UNICAP adjustment – no additional costs need to be capitalized.

Recently, the IRS has pursued new UNICAP theories, contending that dealers should be capitalizing even more costs under the premise that dealerships are not retail businesses and are instead producers. The UNICAP rules for producers can capture more expenses than for retailers. These challenges have occurred during IRS audits in certain areas of the country by particular IRS personnel. We are not aware of any audits where the IRS was ultimately successful with this "producer" theory after the examination appeals process.

An IRS agent did submit a case to the National Office for a technical

advice memorandum (TAM) last year, claiming that the dealership's repair service on customer and dealership vehicles was a production activity, service department costs should be treated as handling costs, and that the dealership was not an on-site retail facility because most of its sales were not retail sales (e.g., dealer trades, vehicle leasing, wholesale parts sales and sales of vehicles to wholesalers and at auctions). The IRS National Office issued the TAM in June and concluded that the repair of customer-owned vehicles was not production, but the dealership is a producer for repair work on vehicles held for sale by the dealership. Additionally, the IRS held that the

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GPI's Louisiana platform while maintaining his role as CFO for the Bohn family's business interests. Prior to his departure from GPI in 2006, Mat also served as the the Southeast Region CFO. In addition to his involvement with the recovery efforts of the Bohn Family dealerships, Mat was a member of the Group 1's Hurricane Katrina Disaster Recovery Team.

Jay M. Ferrero, Senior Vice President and Director of Acquisitions for Capital Automotive, has 28 years of experience in commercial lending, automotive dealership and real estate finance. He joined the firm after years at Comerica Bank, a leading financial institution serving the automotive retail industry, where he was responsible for managing the multi-state regional dealer lending offices in Florida and Illinois. He also served as National Accounts Manager with a focus on large multi-bank credit facilities, working with many of the auto retailing industry's consolidators.

Erich J. Merkle, Practice Leader – Automotive and Economic Analysis at Crowe Horwath, previously ran IRN's global economic and automotive forecast services for the last 10 years. Many of Erich's projections and trend assessments have proven to be highly accurate over the years. He takes into account an appropriate mix of both quantitative and qualitative variables and understands their impact on the economic and automotive landscapes.

Lloyd H. Rawls, Founder and CEO of The Rawls Company, is one of the nation's leading succession planners. Since 1973, Lloyd and his associates have provided business succession services Auto Team America will hold

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Richard N. Sox, Jr., Esq., Managing Partner at Myers & Fuller, P.A., has a practice focused on motor vehicle franchise law. Rich provides counsel to the Firm's dealer clients in the areas of manufacturer facility and incentive programs, franchise realignment, audit chargebacks and sales performance issues. He represents dealers in both manufacturer-sponsored and judicial mediation, state-mandated administrative proceedings as well as in state and federal court.

Sheldon J. Sandler, Founder and CEO of Bel Air Partners, provides the dealership community with sophisticated financial services tailored for the retail automotive industry. Sheldon is a leading authority on the role of financial markets in automobile distribution, dealership valuations and automobile dealership consolidation. In the past several years, Bel Air has acted as exclusive representatives to numerous private auto dealers in the sale of their automotive assets.

Attendees of the forum will include CEOs/CFOs of dealership groups, dealers and general managers, controllers and office managers, and related industry associates involved in dealership business management. This year, to support our automotive industry friends, we are offering this program at no cost to attendees. Attendees may register online and submit panel questions at autoteamamerica.com.

writing, there have been no updates from the IRS since the issuance of the TAM.

For additional information, please contact your local Auto Team America member today!

QUICK CHECK

Start out 2009 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 Compensation of S Corporation Officers

S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. S shareholders report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates.

The Code establishes that any officer of a corporation, including S corporations, is an employee of the corporation for federal employment tax purposes.

The IRS warns S corporations not to attempt to avoid paying employment taxes by having their officers treat their compensation as cash distributions, payments of personal expenses, and/or loans rather than as wages. IRS goes on to stress that the fact that an officer is also a shareholder does not change the requirement that payments to the corporate officer be treated as wages. Courts have consistently held that S corporation officer/shareholders who provide more than minor services to their corporation and receive or are entitled to receive payment are employees whose compensation is subject to federal employment taxes.

IRS states that "Distributions and other payments by an S corporation to a corporate officer must be treated as wages to the extent the amounts are reasonable compensation for services rendered to the corporation."

The amount of the compensation can't exceed the amount received by the shareholder either directly or indirectly. However, if the shareholder received cash or property or the right to receive cash and property, a salary amount must be determined and the level of salary must be reasonable and appropriate.

The health and accident insurance premiums paid on behalf of a 2% S corporation shareholder-employee are deductible by the S corporation as fringe benefits and are reportable as wages for income tax withholding purposes on the shareholder-employee's Form W-2. They are not subject to Social Security or Medicare (FICA) or Unemployment (FUTA) taxes. Therefore, this additional compensation is included in Box 1 (Wages) of the Form W-2, Wage and Tax Statement, issued to the shareholder, but is not included in Boxes 3 or 5 of Form W-2.

For this purpose, a "2% shareholder" is any person who owns (or is considered as owning under the constructive ownership rules of Code Sec. 318) on any day during the S corporation's tax year more than 2% of the outstanding stock of the corporation. A 2% shareholder-employee is eligible for an AGI deduction for amounts paid during the year for medical care premiums if the medical care coverage is established by the S corporation. At one time the medical care coverage had to be in the name of the S corporation. However, IRS stated that if the medical coverage plan is in the name of the 2% shareholder and not in the S corporation's name, a medical care plan can be considered to be established by the S corporation if it either paid or reimbursed the 2% shareholder for the premiums and reported the premium payment or reimbursement as wages on the 2% shareholder's Form W-2. Effectively this new guidance concludes that an S corporation's sole shareholder-employee could buy health insurance in his own name and get the above-the-line deduction for the premium expense if the above requirements are met. Form 1099 should not be used as an alternative to the Form W-2 to report this additional compensation.

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dealership was not an on-site retail facility because most of the sales were not retail sales. The National Office did not give the agent everything they wanted, but apparently believes the producer issue has some merit.

A TAM is only applicable to the taxpayer under audit but gives some indication of the IRS thinking on certain matters. The TAM approach would likely add \$100,000 or more to the annual UNICAP calculation for a typical single point dealer.

The producer issue has been added to the IRS guidance plan and may result in the issuance of a revenue ruling in 2008. We are advising that our clients take no action and continue their historical UNICAP methods (assuming they are following the existing UNICAP rules) until the IRS issues new guidance, if ever. As of this