

Austin Automobile Dealers Association  
823 Congress Ave.,  
Suite 230  
Austin, TX 78701

## Central Texas EXCHANGE

Austin Automobile Dealers Association

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AADA  
823 Congress Ave.,  
Suite 230  
Austin, TX 78701  
Phone: 512/479-0425  
Fax: 512/495-9031



Auto Show Dates  
December 1-3, 2006

[www.autoshowaustin.com](http://www.autoshowaustin.com)



# Central Texas



# EXCHANGE

Austin Automobile Dealers Association

Summer 2006

## Blue Law is Constitutional

Court of Appeals Judge Marilyn Aboussie has ruled that the "blue law" is constitutional and finds in favor of the defendants in the case styled *CarMax Auto Superstores, Inc. v. State of Texas, et al. and Texas Automobile Dealers Association*.

Proposed findings and conclusions state, among other things, that:

1. A rational basis for the statute continues to exist;
2. The statute does not violate the due process clause of the Texas constitution;
3. The statute does not violate the equal rights clause of the Texas constitution;
4. The statute does not violate the special law provision of the Texas constitution;
5. The statute does not violate the commerce clause of the United States constitution;
6. The temporary injunction previously rendered on October 16, 1998, is dissolved;
7. The state is entitled to recover reasonable attorney's fees in connection with this litigation.

***AADA has included as an insert to this newsletter, Judge Marilyn Aboussie's Judgement and Findings.***

## Reformed Franchise Tax

As part of a school finance reform package, the Texas Legislature has passed legislation (H.B. 3) that would substantially revise and expand the Texas franchise tax, and Governor Perry has signed H.B. 3 into law.

The reformed franchise tax in H.B. 3 is a modified gross receipts tax, and it will entirely replace the current franchise tax which is based on taxable capital and earned surplus.

The reformed franchise tax is not effective until January 1, 2008, and corrections and revisions to H.B. 3 are expected during the regular session of the Legislature that begins in January 2007. The Legislature is aware that technical corrections to the legislation are needed. Also, it is anticipated that "shortcomings" of the reformed tax will surface in the coming months as taxpayers begin evaluating the impact on their businesses. The legislation contains many detailed and industry-specific accommodations that can be addressed on an as-needed basis.

## ***Businesses Subject to the Reformed Franchise Tax***

Unlike the current franchise tax, which applies only to corporations and LLCs, the reformed franchise tax applies to every business enterprise in Texas, regardless of form, except for the following:

- Sole proprietorships;
- General partnerships owned entirely by natural persons;
- Passive entities;
- Entities currently exempt from franchise tax under Subchapter B, Chapter 171, of the Texas Tax Code (nonprofit entities and others); and
- Entities with less than \$300,000 in gross receipts.

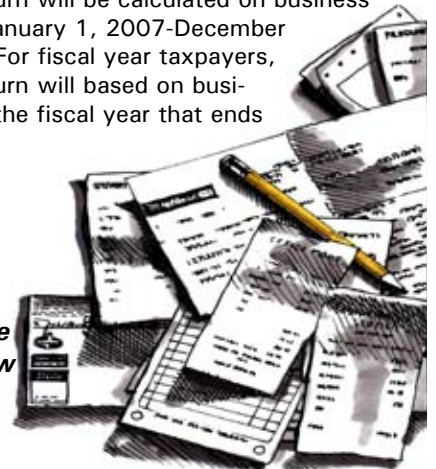
## ***Reformed Franchise Tax Calculation***

The reformed franchise tax calculation begins with "total revenue," which roughly equates to gross receipts. Either cost of goods sold (COGS) or compensation is deducted from total revenue to arrive at the taxpayer's "margin." Generally, only taxpayers that sell real or tangible personal property are permitted to take the COGS deduction. The margin is apportioned to Texas using current franchise tax apportionment rules, except that receipts not subject to tax in another state will no longer be "thrownback" to Texas. After apportionment, the resulting figure is the "taxable margin," which is capped at 70 percent of total revenue. The tax rate (0.5% for retailers and wholesalers, and 1% for all other taxable entities) is applied to the taxable margin to determine the taxpayer's reformed franchise tax liability.

## ***Effective Date***

As stated above, the reformed franchise tax takes effect on January 1, 2008. For most taxpayers, the franchise tax return due in May 2008 will be the first return calculated under the reformed franchise tax. Because the franchise tax is based on the prior year's business, the May 2008 return will be calculated on business done during the January 1, 2007-December 31, 2007 period. For fiscal year taxpayers, the May 2008 return will be based on business done during the fiscal year that ends in 2007.

***See worksheet provided on page 2 for an overview of the reformed franchise tax.***



# Associate Mem-

AADA thanks the following companies for their support of AADA as Associate Members.

**American Financial & Automotive Services, Inc.**  
Laura Hetland  
Phone: 800/967-3633

**Austin American Statesman**  
Ron Mann  
Phone: 512/445-3744

**CIE Management Services**  
Jim Lui  
Phone: 210/564-3215

**Cal-Tex Management Services**  
Gary Osborn  
Phone: 210/564/3215

**Comerica Bank**  
Jon Heine  
Phone: 731/220/5547

**Service Group Life & Casualty**  
Kelly Gray  
Phone: 512/343-0600

**The Freeman Auto Report**  
Gayle Freeman  
Phone: 214/747/4887

**WachoviaDealer Financial Services**  
Stephen Harris  
Phone: 210/321-7612

## AADA

### Job Bank

AADA publishes a standing column for job seekers. Resumes will also be kept on file for prospective employees.

To place a listing in the column, please contact AADA at 512/479-0425; Fax: 512/495-9031.

AADA wishes to express condolences to the family of former AADA President Curt Johnson who passed away on Sunday July 9. Curt was also AADA's 2006 Time Quality Dealer Award Nominee.

## Reformed Franchise Tax Worksheet

Total Revenue \$ \_\_\_\_\_

Minus either Cost of goods sold or Compensation ( \$ \_\_\_\_\_ )

**Equals Margin** \$ \_\_\_\_\_

*Times* Apportionment Factor x \_\_\_\_\_

**Equals Taxable Margin** \$ \_\_\_\_\_

*Times* Tax Rate x \_\_\_\_\_

**Equals Tax Due** \$ \_\_\_\_\_

**Combined Reporting:** Affiliated entities related by 80% or more common ownership will file a single report on a unitary, combined basis.

**Total Revenue:** For an entity taxed as a corporation for federal income tax, total revenue equals line 1c plus lines 4-10 of federal Form 1120. For an entity taxed as a partnership for federal income tax, total revenue equals line 1c plus lines 4-7 of federal Form 1065, plus lines 2-11 of Schedule K. The legislation allows a number of exclusions from total revenue for specific types of businesses.

**Cost of Goods Sold:** Line 8 of Schedule A to federal Form 1120, 1065 or 1120S, with a number of specific adjustments too numerous to list here. A COGS deduction is allowed only to taxpayers that sell real or tangible personal property, except that a lending institution may deduct interest as COGS.

**Compensation:** All wages and cash compensation up to \$300,000 per employee, plus the cost of health, retirement and workers' compensation benefits. (Benefits are not subject to the \$300,000 cap.) A taxpayer treated as an S corporation or a partnership for federal income tax purposes may deduct wages, salaries, stock options, and net distributive income paid or attributed to a shareholder or partner that is a natural person, subject to the \$300,000 cap per person.

**Taxable Margin:** If the taxable margin yielded by the calculation is greater than 70% of total revenue, then disregard the taxable margin calculation. Instead, the taxpayer's taxable margin will be 70% of total revenue.

**Apportionment Factor:** Texas gross receipts, divided by gross receipts everywhere. Examples: If all sales are in Texas, then the apportionment factor is 1. If half of all sales are in Texas and half are in another state or states, then the apportionment factor is 0.5 .

**Tax Rate:** The tax rate is .5% for retailers and wholesalers, as defined by the 1987 Standard Industrial Classification Manual. The tax rate for all other taxpayers is 1%.

## Creating a Used-Vehicle Marketing Plan

A used-vehicle operation can't reach its potential without an effective marketing plan. Dorthy Miller Shore suggests the following as a planning checklist:

### (1) SET YOUR BUDGET.

Whether you plan your advertising budget month by month (based on a percentage of your previous month's sales) or work on a fixed yearly budget, you need to have a plan for using your marketing resources wisely. Stay within your budget, and be sure to track your results. Knowing which media brought more customers to your showroom—and which ones didn't—will help you refine your advertising approach in the future.

### (2) SET YOUR MEDIA PLAN.

Which group or groups are you trying to reach? Which medium or combination of media will you use to reach them? Whatever your approach, be creative, and make sure you spend your dollars on advertising that reaches your target audience as efficiently as possible. If that direct mail flyer didn't bring in as many 18-34-year-olds as you hoped, try something else.

### (3) ESTABLISH A CREATIVE OUTLINE.

What promotions do you want to run during the next year? As part of your creative outline, you should try to include at least four major events each year. Spread them out—perhaps one per quarter—so that each event can be fresh in your customers' minds.

### (4) CREATE A TRADITION OF ANNUAL EVENTS.

As your dealership grows, you'll want to keep several of your promotions as annual events. Customers in your selling area will come to recognize and expect your

regular events, helping you establish a stronger identity in your selling area.

### (5) SET YOUR CALENDAR USING HIGH AND LOW SALES TRENDS.

Keep records of how well your events do so that you'll know whether to repeat them in the future. Also, note any other factors—weather, remodeling, other local events, and so forth—that affected your event, for good or for ill. A notation such as "We've had more customers at our sales events since we remodeled our showroom" will help jog your memory when you're planning for future events.

### (6) PREPARE YOUR SALES MATERIALS AHEAD OF TIME.

Whatever media you plan to use, it's always a good idea to have themes, layouts, and other details thought out in advance.

### (7) PLAN YOUR INVENTORY TO MATCH YOUR CALENDAR.

If you're going to have a major sales event, you'd better make sure you have vehicles people will want to come and see. Trade-ins will account for perhaps 30-60% of your event inventory. Auctions help you find the rest of what you'll need, and they'll also help you stock the best-selling, most popular vehicles in your selling area.

This article is adapted from the NADA 2006 Convention workshop *Extreme Makeover: Revitalizing Your Used-Car Advertising*, presented by Dorthy Miller Shore. Order this and other convention workshop recordings online at [www.iplaybackNADA.com](http://www.iplaybackNADA.com).



[www.austinautodealers.org](http://www.austinautodealers.org)

CHECK OUT AADA'S NEW WEBSITE!

Keep up to AADA events  
date with: Auto Show information

Links to: Automobile associations  
State agencies  
Tax assessor-collector offices

View: Past and current newsletters/holiday surveys  
Dealer listings and directions  
Association By-laws  
Associate member contact information



## Texas Workforce Commission Civil Rights Division Adopts New Rules

The 78th Texas Legislation passed HB 2933 in 2003, which abolished the Texas Commission on Human Rights and transferred their powers and duties to the newly created Texas Workforce Commission Civil Rights Division (CRD). The Commission now adopts rules to incorporate the legislative direction of HB 2933.

### Unlawful Employment Practices (40 TAC § 819.12)

#### Discrimination by Employer

An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

1. Fails or refuses to hire an individual discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions or privileges of employment; or
2. Limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner that status of an employee.

#### Admission or Participation in Training Program

An employer with an apprenticeship, on-the-job train-

ing, or other training or re-training program may not base admission or participation in the program or race, color, disability, religion, sex, national origin, or age, unless a training or re-training opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order.

#### Retaliation

It is an unlawful employment practice if an employer retaliates or discriminates against a person who opposes a discriminatory practice; makes or files a charge; files a complaint; or testifies, assists, or participates in any manner in an investigation, proceeding or hearing, if the employer commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age.

#### Discriminatory Notice or Advertisement

It is an unlawful employment practice to print or publish or cause to be printed or published a notice or advertisement relating to employment that:

- A. Indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and,
- B. Concerns an employee's status, employment, or admission to or membership or participation in a



## New Medical Information Restrictions

As previously reported, the Federal Reserve Board (FRB) and the other federal banking regulatory agencies recently issued a joint Interim Final Rule imposing restrictions on the ability of creditors to obtain and use *medical information* in connection with credit eligibility decisions and to share that information with their affiliates. *Medical information* is broadly defined to include such items as the payment history and status of a consumer's medical debts and any amount of disability income the consumer receives. At the urging of NADA and others, the agencies agreed that the FRB would issue a separate rule, known as Regulation FF, to extend to dealers and other non-bank creditors critical exceptions that permit them to obtain and use medical information in certain limited circumstances. Regulation FF, which implements section 411 of the FACT Act, took effect March 7, 2006. To assist dealers in understanding and complying with the new restrictions, NADA has posted a summary of section 411 and Regulation FF at [www.nada.org/factact](http://www.nada.org/factact) (requires member number).

Dealers should ensure that Regulation FF is included in their compliance checklists along with other FRB rules that impact their operations (Regulations B, M and Z).

## DOL Issues Final Regulations For USERRA

Final regulations have been implemented by the Federal Department of Labor as to the Uniformed Services Employment and Re-employment Rights Act of 1994 and a Notice of Rights and Duties under the Act has also been adopted (USERRA) (20 C.F.R. Part 1002; 70 *FedReg* 75246; 70 *FedReg* 75313).

USERRA covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war.<sup>1</sup>

USERRA establishes a floor for the employment and re-employment rights and benefits of those it protects, i.e., no employer can refuse to provide any right or benefit guaranteed by USERRA.

An employer cannot deny initial employment, re-employment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

#### Re-employment Eligibility

Generally, if an employee has been absent from a position by reason of service in the uniformed service, that person is eligible for re-employment under USERRA by meeting the following criteria:

1. The employer has advanced notice of the employee's service;
2. The employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employer;
3. The employee timely returns for work or applies for re-employment; and,
4. The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

#### Application for Re-employment

1. If the period of service in the uniformed services was less than 31 days or for the purpose of examination to determine fitness to perform

service, the employee must report back to the employer not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service.

2. If the employee's period of service in the uniformed services was for more than 30 days but less than 181 days, the employee must submit an application for re-employment, written or verbal, with the employer not later than 14 days after completing service.
3. If the employee's period of service in the uniformed services was for more than 180 days, the employee must submit an application for re-employment, written or verbal, not later than 90 days after completing service.

If the employee is hospitalized or convalescing from an illness or injury from the performance of service, the employee must submit an application at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of completion of service.

An employee who does not timely report for or apply for re-employment becomes subject to the conduct rules, established policy, and general practices of the employer pertaining to an absence of scheduled work.

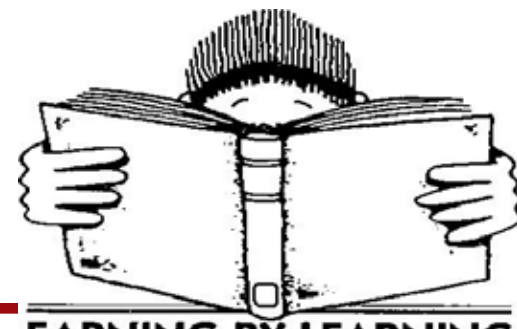
If there has been a change in ownership of the employer, the application is then submitted to the employer's successor-in-interest.

#### Employer Defenses

The employer is not required to re-employ the employee if the employer establishes that its circumstances have so changed as to make re-employment impossible or unreasonable. However, the employer may not refuse to re-employ the employee on the basis that another employee was hired to fill the re-employment position during the employee's absence, even if re-employment may require the termination of the replacement employee.

#### Benefits From Employment

*continued on page 4*



## EARNING BY LEARNING

Earning by Learning, AADA's reading incentive program for fourth-graders is well underway for the 2006-2007 school year!

Each completed book and successful oral report earns the student \$1.00.

The program is funded by the ticket proceeds from the annual Austin Auto Show sponsored by AADA.

AADA now makes it even easier than before for dealerships to participate. Dealerships are asked to provide personnel weekly to visit their "adopted" school for book reports "listening days". AADA fully funds the payments to the students for the books read. Please call AADA now if your dealership is not participating!

Help AADA spread the terrific program to as many schools and students as possible.

For more information, please call the AADA office at (512) 479-0425.

During a period of services in the uniformed services, the employee is deemed to be on leave of absence from the civilian employer. The employee is entitled to non-seniority rights and benefits generally provided by the employer to any other employee with similar seniority, status, and pay.

If employment is interrupted by a period of service, the employee must be permitted, upon request, to use any accrued vacation, annual leave, or similar leave with pay during the period of service, in order to continue his or her civilian pay. If the employer allows an employee to use sick leave for any reason, then the employee may use accrued sick leave during a period of service in the uniformed services.

If the employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue coverage for a certain period of time. For example, when the employee is performing service in the uniformed services, he or she is entitled to continue coverage for himself or herself as well as dependents if the plan offers dependent coverage, under a health plan provided in connection with the employment.

The plan must allow the employee to elect to continue coverage for a period of time that is the lesser of: (a) the 24-month period beginning on the date on which the employee's absence for the purpose of performing service begins; or, (b) the period beginning on the date on which the employee's absence for the purpose of performing service begins on the ending date on which he or she fails to return from service or apply for a position of employment.

If the employee performs service in the uniformed service for fewer than 31 days, the employee cannot be required to pay more than the regular employee share, if any, for health plan coverage. If the employee performs service in the uniformed services for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employer's share plus the employee's share, plus 2% for administrative cost.

**Re-employment**

The employer must promptly re-employ the employee when he or she returns from a period of service if the employee meets the eligibility criteria (see above, "Re-employment Eligibility").

"Prompt employment" means as soon as practical under the circumstances and absent unusual circumstances, re-employment must occur within 2 weeks of the employee's application for re-employment.

Generally, the employee is entitled to re-employment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service along with the pay, benefits, seniority, and other job perquisites that the employee would have attained if not for the period of service.

**Disabled Employee**

A disabled service member is entitled to the position he or

she would have attained but for the uniformed service. If the employee's disability was incurred in or aggravated during the period of service in the uniformed services, the employer must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform duties of the re-employment position. If the employee is not qualified for re-employment after reasonable efforts to accommodate the disability and to assist the employee to become qualified, the employee must be re-employed in a position according to the following:

1. A position that is equivalent in seniority, status, and pay;
2. A position that is the nearest approximation to the equivalent position, consistent with the employee's circumstances, in terms of seniority, status, and pay.

The employer is not required to re-employ the employee on his or her return from service if he or she cannot, after reasonable efforts by the employer, qualify for the appropriate re-employment position.

**Rate of Pay**

In general, the rate of pay is determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

**USERRA Discharge Protection**

If the employee's period of service in the uniformed services was more than 30 days, there can be no discharge except for cause:

1. For 180 days after the employee's date of re-employment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,
2. For 1 year after the date of re-employment if the most recent period of uniformed service was more than 180 days.

The employee may be discharged for cause based either on conduct or because of the applications of other legitimate non-discriminatory reasons, such as the elimination of the employee's job position.

PLEASE PRINT AND POST THE ENCLOSED USERRA NOTICE or print a copy at [www.dol.gov/vets/programs/userra/USERRA\\_Private.pdf](http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf)

<sup>1</sup>National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA (20 C.F.R. § 1002.57).

**FROM NADA**

**New Fax Ad Rules Take Effect August 1st**

We reported last year that NADA was part of a broad industry coalition that secured enactment of the Junk Fax Prevention Act, which preserves the essential *established business relationship* as an appropriate basis to send fax ads to consumers and businesses. The new law also imposes new restrictions on fax ads and directs the Federal Communications Commission (FCC) to implement those restrictions. The FCC recently issued a final rule for this purpose and established August 1, 2006 as its effective date.

The new rule generally requires:

1. senders to include on the first page of their fax ads a clear and conspicuous notice that recipients may opt-out of future fax ads from the sender;
2. the notice to contain certain information, including a continuously-

available phone number, fax number and cost-free mechanism for a recipient to transmit an opt-out request;

3. senders to comply with opt-out requests within 30 days of the request and sooner if they are capable of doing so; and

4. in addition to the need to have an *established business relationship* with, or *prior express permission* from, the recipient of a fax ad, only sending fax ads to fax numbers the recipient has voluntarily provided.

The FCC rule contains numerous details on how senders must comply with these restrictions. To assist our members with their compliance efforts, we have prepared a summary of the new restrictions that is available at [www.nada.org/faxadvertising](http://www.nada.org/faxadvertising) (requires member number).

The summary contains sample opt-out notice templates. NADA is in the process of mailing the summary to all NADA members.



**West Austin Caregivers**

AADA is pleased to announce the sponsorship of West Austin Caregivers First Annual "Stories from the Road" fundraiser. The sponsorship is to honor AADA member John E. Scurlock Sr. Mr. Scurlock is responsible for the highly acclaimed Earning by Learning program in the Austin Independent School District. Mr. Scurlock has also been a great friend to many of the franchised Austin Dealers throughout the years.

The sponsorship will benefit the "Stories from the Road" publication which features 95 heartfelt stories from Volunteer Drivers. The book spotlights the mission of West Austin

Caregivers (WAC) and other organizations across the country of providing services to help seniors maintain their independence.

The release of "Stories from the Road" provides the backdrop against which WAC board member and AADA member John Scurlock's story is honored. In celebration of the publication of his story in the book, John's role as President of the WAC board and his services over the years as a volunteer driver, the WAC organization will designate John as the Inaugural Recipient of the WAC Volunteer of the Year Award.

To learn more about the West Austin Caregivers please call (512) 472-6339 or e-mail [wacaregivers@juno.com](mailto:wacaregivers@juno.com).

