

Vehicle Exports – Protecting Your Dealership

Sales of new vehicles that wind up being exported are a continuing problem for dealers. Generally, franchisors prohibit the sale of new vehicles for export within a specified time period following sale. Penalties for violating these policies can be expensive. New vehicles that wind up as exports can lead to chargebacks for fees and for holdback, incentives, and similar amounts paid or payable to a dealer. Also, where allocations are an issue, a sale followed by an export can lead to loss of allocations.

Some states have passed statutes designed to give dealers protection in the event that they sell a new vehicle in good faith to a domestic buyer, but the vehicle winds up being exported. Where the dealer has taken steps to reasonably satisfy itself that new vehicles it sold were not intended for export, the dealer should not be penalized. Generally the laws require the franchisor to prove that the dealer had reason to know about the plans for export and that the dealer didn't use appropriate due diligence.

These laws are designed to protect dealers against occasional sales where they had no knowledge of buyers' plans to export. They are not complete insulation from liability if vehicles are exported. Instead, they are protection against a franchisor's chargeback to a dealer for an export where the dealer used due diligence and did not have knowledge of the intention to export.

Even in states where these laws are in place, dealers must still recognize the need to comply with franchisors' export policies. Here are some things to consider.

1. Understand the policy. What does the manufacturer require? Will the manufacturer chargeback a dealer where vehicles are exported within six months of sale? Or within a year? What does the policy say with respect to the standard used for chargeback? Is the chargeback for any export? Or is it for an export where the dealer has reason to know that the vehicle would be exported? What state law applies to affect the enforceability of the policy by the manufacturer? Dealers should understand these issues when designing their own programs to protect against vehicle exports.
2. Understand the franchisor's reason for its policy. Manufacturers are famous for imposing policies just to control dealers. However, that is not solely the reason for export policies. New vehicle distributors have rights within certain countries. When vehicles manufactured for sale in one distributor's territory wind up being sold in another distributor's territory, problems can arise between the distributors. Not only does the distributor suffering imports lose sales, it will find itself with increased warranty and customer service obligations. The distributor with vehicles imported into its territory wants compensation from the distributor whose vehicles were exported. Thus, manufacturers impose penalties on distributors in countries where vehicles are exported to compensate those distributors in countries where the vehicles are imported. The distributor that is penalized seeks to pass those penalties along to dealers.

3. Train your retail personnel. Retail personnel, particularly managers who control sales transactions, must understand the manufacturer's policies and the reasons behind them. That will enhance their ability to manage compliance.
4. Know your customer. As in all transactions, a dealer must know its customer. If there is any concern that the buyer may not be the end user, do due diligence. Are you:
 - Dealing with a foreign or an out of area buyer?
 - Being told that the buyer wants to pay by cashier's check or wire transfer?
 - Dealing with a company that is buying multiple vehicles?
 - Dealing with a buyer spreading multiple vehicle purchases around in different purchaser names?
 - Dealing with someone who wants to have a transporter pick up the vehicle?
 - Dealing with someone does not want you to do the title work?

These can all be export signals. That means that you must ask some questions and make notes that you keep in your deal file.

- Who will own the vehicle?
- Who will drive the vehicle?
- To what use will the vehicle be put?
- If the buyer is a leasing company, who will be the end user?
- Where is the end user located and what does it do?
- Where will the vehicle be titled and who will do the title work?
- Why does the buyer not want the dealership to do the title work?

These are all areas to investigate when selling a new car if there are export signals.

5. Is your buyer on the manufacturer's exporter list? There is no more sure-fire way to give a franchisor a reason for a chargeback on an exported vehicle than to sell to someone on the franchisor's exporter list. Check the exporter list before you deliver a vehicle to a customer when export signals come up. That is especially the case when you're dealing with an entity -- a corporation or an LLC -- that is buying multiple vehicles. Even if you have done business with the buyer previously, check the list each separate time you do business. Companies that buy multiple cars and export them can wind up on the list based upon the vehicles they buy from you. The fact that they are not on the list when they start doing business with you does not mean that always will be the case.