



March 21, 2020

Via E-Mail

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Assistant Secretary Kautter,

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair, and parts sales. Together they employ over 1,100,000 people nationwide, yet the majority are small businesses as defined by the Small Business Administration. We submit these comments to urge the Department of the Treasury (Treasury) to implement the tax component of the Families First Coronavirus Response Act (FFCRA)¹ in a manner that ensures that automobile and truck dealerships have sufficient cashflow to fund the new paid leave entitlements that are created by the statute.

The retail automobile business is not only capital intensive, it has thin profit margins. For the year ended December 31, 2019, the average dealer's pretax profits amounted to just 2.3% of sales. The combination of required capital along with razor thin profit margins translates to a small business that consumes cash at a high rate, with little room for disruption. On top of this, dealers' top expense is their employees. An average dealer has \$61 million dollars in sales while employing approximately 70 full time people at an average monthly rate of pay of \$4,909.² The cost of these employees consumes close to half of a dealer's gross profit (sales less the cost of products and services provided). A marginal decrease in gross profit for a business that averages slightly more than 2% of sales is stressful to cashflow. A significant decrease in gross profit for a business that spends 50% of its gross on payroll is unsustainable.

The FFCRA seeks to provide families with resources to bridge the financial gap due to partial or complete interruptions in work due to COVID-19 while simultaneously providing relief to employers. In order to accomplish these goals, however, dealers will need to maintain liquidity throughout the ongoing crisis and its subsequent recovery. As explained below, relying exclusively on a deferred tax credit will simply not provide sufficient liquidity for dealers to satisfy their obligations under the statute. Accordingly, NADA urges Treasury to include the

¹ Public Law No: 116-127.

² NADA Data 2019 Midyear Report.

following provisions in its implementing regulations to ensure dealers have sufficient cashflow to meet their new payment obligations.³ Many of these points are consistent with the Department of Treasury Announcement on Coronavirus-Related Paid Leave (Treasury Announcement) which we encourage Treasury to follow.⁴

- 1) **Explicitly provide that businesses may draw from all federal taxes (both employer and employee income and payroll taxes, including such taxes that have been escrowed since the beginning of the year and from all of its employees) to pay qualifying leave time to their employees.**

In a crisis, the most important concern for maintaining business operations is cashflow and liquidity. Without adequate liquidity, dealerships will close, and their employees will be laid off. Providing the widest possible access to tax credits will provide additional liquidity to dealers while also allowing them to retain staff.

Consistent with the purpose of the FFCRA and the Treasury Announcement, it is essential that businesses be permitted to utilize their entire pool of escrowed federal taxes to fund the new statutory leave mandate. This would include employer and employee income and payroll taxes that have been escrowed but not remitted to the IRS since the beginning of the year. Importantly, it also would include withheld federal taxes from all of their employees – not just those employees to whom FFCRA payments will be made.

The following simple calculation by dealer accountants (which is set forth in greater detail in the attachments on pg. 4-5) illustrates the importance of allowing dealers to use escrowed funds from all of its withheld income and payroll taxes to pay the FFCRA leave entitlement: If an average sized dealership with 70 employees that pays an average wage of \$4,909 per month to each employee incurs a 25 percent staffing reduction due to employees on FFCRA leave, the dealership would only be able to pay such leave to 2 employees based on the amounts withheld for employer social security. Conversely, the same dealership could cover up to 21 employees on sick leave, or about 30 percent of its workforce, if it can pay the leave entitlement with all of the federal taxes it has withheld. Simply put, the goals of the FFCRA will fail if businesses may not immediately access all withheld federal taxes for this purpose.

³ NADA will be addressing other components of the FFCRA in separate comments to the Department of Labor.

⁴ Available at <https://home.treasury.gov/news/press-releases/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus-related-leave>.

2) **Accelerate a business' access to tax credits to cover the portion of the funding obligation that cannot be covered by the expanded withholding amounts.**

While widening the base of tax credits immediately available to dealers will significantly aid in addressing liquidity concerns, many dealerships will not be able to fully offset the funds they must use to pay the new statutory leave entitlement with their withheld federal taxes. This is especially true in cases where dealerships have been forced to close due to quarantine or isolation orders by state or local authorities.

In its announcement, Treasury addresses this challenge by prudently providing a mechanism for businesses to apply for and receive tax credits on an accelerated basis. While helpful, the cashflow challenges dealers must now confront would be further aided by – and we urge Treasury to permit – extending the due date of federal income and payroll tax deposits to the due date of federal form 941, Employer's Quarterly Federal Tax Return, for the remainder of 2020. In the alternative, we urge Treasury to extend by 30 days the due date of federal income and payroll tax deposits.⁵

3) **Minimize Compliance Burdens**

Especially in times of crisis, Treasury must make efforts to greatly reduce the administrative burden on businesses applying for tax credits and quickly resolve any instance of denied claims. Dealerships will be operating with smaller staffs than normal, and it is likely that smaller dealerships will not have trained, full-time human resources employees to easily comply with burdensome documentation requirements. In order to accomplish the goals of the legislation, compliance burdens must be kept to a minimum.

We thank you for your efforts to carry out the purpose of the FFCRA. Please contact me if we can provide you with any additional information.

Sincerely,

/s/

Paul D. Metrey
Vice President, Regulatory Affairs

Attachments

⁵ The need for this extension is particularly important because, even though the leave entitlement is imminent, the form for applying for the credit and the apparatus for ensuring its consistent delivery in a two-week period has yet to be developed.

| CALCULATION OF NUMBER OF PERSONNEL THAT COULD BE PAID SICK OR FMLA BENEFITS AT VARIOUS STAFFING LEVELS | | | | | | | | |
|--|--|--|--|----------|-----------|-----------|-----------|-------|
| ASSUMING ONLY EMPLOYER PORTION OF SOCIAL SECURITY IS AVAILABLE FOR CREDIT OFFSET | | | | | | | | |
| | | | | Weekly | Bi-Weekly | 25% Staff | 50% Staff | |
| | | | | | | Reduction | Reduction | |
| Average Compensation per Week | | | | \$ 1,133 | | \$ 1,133 | \$ 1,133 | |
| Average Number Employees | | | | 70.00 | | 52.50 | 35.00 | |
| Average Gross Weekly Payroll | | | | 79,310 | 158,620 | 59,483 | 39,655 | |
| Employer Portion of SS | | | | 6.20% | 4,917 | 9,834 | 3,688 | 2,459 |
| Average Weekly Benefit - Sick Pay - Full Pay | | | | | | | | |
| Not to Exceed \$511/Day | | | | | 1,133 | 1,133 | 1,133 | |
| Nuner of People That Could be On Sick Leave and Covered By Payroll Tax Obligation First Two Weeks | | | | | 9 | 3 | 2 | |
| Average Weekly FMLA Benefit - 67% of Average Pay | | | | | | | | |
| Not to Exceed \$200/Day | | | | | 759 | 759 | 759 | |
| Number of People That Could Be On FMLA Benefit and Covered by Payroll Tax Obligation | | | | | 13 | 5 | 3 | |

| CALCULATION OF NUMBER OF PERSONNEL THAT COULD BE PAID SICK OR FMLA BENEFITS AT VARIOUS STAFFING LEVELS | | | | | | | |
|--|--|--------|--------|----------|-----------|------------------------|------------------------|
| ASSUMING ALL EMPLOYER AND EMPLOYEE FEDERAL TAX ES ARE AVAILABLE FOR CREDIT OFFSET | | | | | | | |
| | | | | Weekly | Bi-Weekly | 25% Staff Reduction | 50% Staff Reduction |
| Average Compensation per Week | | | | \$ 1,133 | | \$ 1,133 | \$ 1,133 |
| Average Number Employees | | | | 70 | | 52.50 | 35.00 |
| Average Gross Weekly Payroll | | | | 79,310 | 158,620 | 59,483 | 39,655 |
| Employee SS | | 6.20% | 4,917 | | | | |
| Employee Medicare | | 1.45% | 1,150 | | | | |
| Employee FIT | | 15.00% | 11,897 | | | | |
| TOTAL EMPLOYEE FEDERAL WITHHOLDING TAX | | | | 17,964 | 35,927 | 26,946 | 17,964 |
| Net Pay | | | | 61,346 | 122,693 | 92,019 | 61,346 |
| Employer SS | | 6.20% | 4,917 | | | | |
| Employer Medicare | | 1.45% | 1,150 | | | | |
| TOTAL EMPLOYER FEDERAL PAYROLL TAXES | | | | 6,067 | 12,134 | 9,101 | 6,067 |
| Total Payroll Per Pay | | | | 79,310 | | | |
| Total Employer Taxe Per Pay | | | | 6,067 | | | |
| Total Cost Per Pay | | | | 85,377 | 170,754 | 128,066 | 85,377 |
| Cash Outlay Per Payroll | | | | 61,346 | 122,693 | 92,019 | 61,346 |
| TOTAL CASH DEFERRED UNTIL PAYROLL TAX DEPOSIT DUE | | | | 24,031 | 48,062 | 36,046 | 24,031 |
| Average Weekly Benefit - Sick Pay - Full Pay | | | | | | | |
| Not to Exceed \$511/Day | | | | | 1,133 | 1,133 | 1,133 |
| Numer of People That Could be On Sick Leave and Covered By Payroll Tax Obligation First Two Weeks | | | | | 42 | 32 | 21 |
| Average Weekly FMLA Benefit - 67% of Average Pay | | | | | | | |
| Not to Exceed \$200/Day | | | | | 759 | 759 | 759 |
| Number of People That Could Be On FMLA Benefit and Covered by Payroll Tax Obligation | | | | | 63 | 47 | 32 |