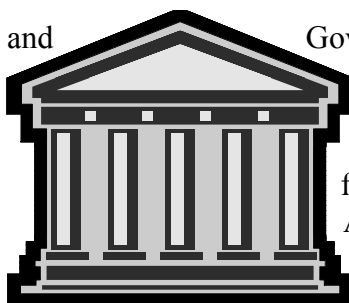


## MD, VA Legislatures Battle Over Budgets

### *Dealers to Fight Proposed Increases in Vehicle Titling Taxes*

General Assemblies in Maryland and Virginia are again in session, and if the first week is any indication, it will be a battle royal over budget and tax issues in both legislatures. WANADA and Washington area dealer leadership are working in close concert with VADA and MNCTDA to ward off proposed increases in motor vehicle taxes in both states, and to make sure other dealer issues are not overlooked. Here is the first take on what to expect.



Gov. Ehrlich has until January 26 to submit his budget proposal, which is expected to include deep cuts in many programs and will increase fees and surcharges across the board. At that point, the House and Senate will respond with competing legislation.

In this heated environment, the primary issue for Maryland dealers will be to make sure the

*(Continued on page 2)*

#### Maryland

It's not enough that during this 90-day session Robert L. Ehrlich Jr., Maryland's first Republican Governor in 34 years, will be trying to work with a Democrat-dominated House and Senate over how to resolve the state's record \$700 million budget deficit. He will also be dealing with Senate President Mike Miller and Speaker of the House Michael Busch, who are publicly at odds with each other. And while budget and tax issues will take center stage, a variety of contentious side issues – slots, gay marriage, college tuition, education and a state-wide smoking ban, to mention a few – are also certain to strain the agenda.

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### VA Dealer Board to Consider eBay "Bird Dog" Fees

At its January 12, 2004 meeting, the Virginia Motor Vehicle Dealer Board (MVDB) agreed to reconvene its Internet Task Force to consider the compensation arrangement of eBay Motors, which charges a fee for listing a vehicle and a fee when the first successful bid is registered. There is some question whether the fee charged for the bid registration is a "bird dog" fee under Virginia franchise law. The task force will consider the legality of the eBay model.

Several other notable issues were also considered:

**Zoning Violations.** MVDB considered a case that was brought against a dealer for alleged violations of zoning regulations. The county has regularly challenged the practices of the dealer. The zoning office brought the matter to the attention of MVDB and asked that sanctions be imposed against the dealer. The hearing officer who considered the case in an informal fact find-

*(Continued on page 3)*

## Taxes *(continued from page 1)*

motor vehicle titling tax does not go up from its 5% level. It is quite likely that a proposal to increase the titling tax will be included in a wide-ranging bill to raise taxes. Busch has mentioned on several occasions that one of the best ways to fund the transportation trust fund is to increase the titling tax, which has a built-in annual accelerator as the price of new vehicles increases.

MNCTDA and WANADA will vigorously oppose any attempt to raise the titling tax by pointing out that, "The tax has gone straight up as a revenue raiser, and has now almost caught up with the gas tax, as the largest contributor to the transportation trust fund," said MNCTDA CEO Peter Kitzmiller.

Maryland dealers will also point to the California example, where a big increase in vehicle registration fees had a devastating effect on sales until Arnold Schwarzenegger was elected governor and repealed it.

Dealers will also resist any attempt to expand the tax base by taxing services, which could affect dealership service departments.

MNCTDA, with WANADA's support, will also introduce a bill to further regulate the manufacturer's ability to audit dealers on warranties. Similar to Virginia law, it will stipulate that if a dealer can prove a repair was done under warranty they are entitled to be reimbursed by the manufacturer, even if all the paperwork is not exactly correct. The bill will also seek to reduce the amount of time a manufacturer has to audit a dealer, which is currently two years.

### Virginia

In a reverse of Maryland politics, Democratic Gov. Mark Warner is brawling with a GOP-controlled House of Delegates over Virginia's budget shortfall, which has been the dominant issue for the past two years. But like Maryland, there is also a pronounced divide between the Virginia Senate and House over how to resolve the deficit, which will be the Battle of the Bulge during the 60-day session.

Of most concern to dealers is a tax reform package offered by Sen. John Chichester (R-Stafford), who chairs the powerful Senate Fi-

nance Committee. His plan, which he is calling the Virginia Investment Act, would increase state revenues by approximately \$2.5 billion a year and

provide some \$725

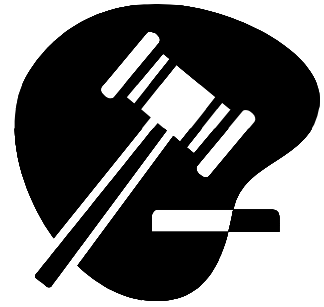
million per year in additional transportation funding, primarily through a substantial increase on the motor vehicle titling tax from 3% to 5.5%. The bill also calls for increasing automobile related fees, including a three-cent increase in the gas tax and an increase in the sales tax on gasoline, as well as a \$10 increase in the motor vehicle registration fee.

By contrast, Gov. Warner's more modest tax package would increase state revenue by about \$500 million per year, and offers a limited increase in transportation funding of approximately \$185 million per year.

Both tax packages face an uncertain future in the General Assembly. It appears that the Senate may be more willing to embrace a tax plan that includes increasing a variety of taxes and fees, while the Republican leadership in the House of Delegates seems to oppose any broad based tax increase. Any increases in motor vehicle titling fees will mobilize dealers and be strongly opposed by VADA and WANADA.

Another important issue will be a dealer group backed bill that will create an opportunity for a dealer to "cure" a claim under the Virginia Consumer Protection Act. As it now stands, dealers must pay plaintiff attorney fees and, as a result, are encouraged to "swing for the fences," explained Mike Charapp, WANADA's government relations consultant for Virginia. "This bill would allow a dealer, early in the process, to make an offer of cure. If the plaintiff rejects it, and the ultimate verdict is less than the amount of the cure, the plaintiff can't recover attorney fees from the dealers."

Charapp feels that chances are good for passage of this legislation "if dealers get out and support it -- dealer support will be critical." The WANADA Bulletin will offer further updates on specific bill numbers and summaries for both legislative sessions as events unfold.



**NADA MONTHLY DEALER OPERATIONS ARTICLE:****Are You in Compliance with the Fair Labor Standards Act (FLSA)?**

**Q. Who of the following dealership employees is exempt from *both* minimum wage and overtime requirements?**

☐ Parts manager ☐ Assistant service manager ☐ Office manager ☐ F&I clerk ☐ Technician

**A:** The minimum wage and overtime requirements do not apply to employees whose job duties, responsibilities, and pay methods meet the regulatory requirements for the FLSA's *executive*, *administrative*, or *professional* exemptions, and this determination depends upon more than just an employee's title or amount of compensation. On this list, the parts manager is reasonably likely to be exempt from both requirements in that such employees often are paid on a salary basis and perform work that meets the requirements for an employee who is employed in a bona fide *executive* capacity. Dealers, general managers, sales and department managers, and shop foremen might additionally be exempt as *executive* or *administrative* employees, if the nature of their work and pay meets those exemptions' definitions. The question, obviously, is more complex than it seems.

The question and answer above is taken from NADA Management Series Bulletin BM.30, *Wage-Hour Self-Audit: Are You in Compliance with the FLSA?* It is one of a dozen questions and answers in a quiz designed to increase dealers' awareness of their responsibilities under the Fair Labor Standards Act, which sets minimum wage, overtime, equal pay, recordkeeping, and child labor standards. The Act mandates that employers pay their employees at least the federal minimum wage, plus overtime pay at a rate of time-and-one-half of the employees' regular rate for hours worked in excess of 40 in a work week. Numerous exemptions to one or both of these requirements apply to employees whose salaries and job duties put them in specific categories.

Do you know who of your employees is exempt and who isn't? Are you paying your nonexempt employees at least the federal minimum wage? Are you scrupulous about all laws that affect teen driving?

How about your pay plans? Are they in writing? Do you offer employees "guarantees" of any kind? Do you provide "comp time" in lieu of overtime? Are you absolutely certain you are paying your employees correctly?

For a brief discussion of all these questions, please consult the NADA Bulletin. You may order copies at \$2.50 each for members, \$5.00 each for nonmembers by visiting the online catalog at [www.nada.org/mecatalog](http://www.nada.org/mecatalog) or calling the National Automobile Dealers Association (NADA) at 800-252-6232, ext. 2, or 703-821-7227. The NADA Bulletin is also available in an electronic version.

**VA Dealer Board** *(continued from page 1)*

ing conference suggested that the dealer's license be suspended. But MVDB determined that it would not become embroiled in zoning litigation between the county and a business, and it refused to take any action.

**Advertising.** A civil penalty of \$1,000 was levied against a dealer for violation of the Truth-in-Lending advertising requirements. Despite several written warnings, the violation persisted. The dealer contended that he had left it up to the newspaper to create a correct advertisement.

MVDB noted that it was the dealer's obligation to ensure that its advertising was legal and assessed a penalty.

**Request to DMV.** MVDB noted its concern about the inability of dealers to do titling work for courtesy deliveries through electronic title services, and informally requested that DMV review this issue.

The next meeting of the MVDB and its committees were set for March 8, 2004.

**NADA NOTES:****NADA Membership Tops Record**

More than 93 percent of U.S. franchised new car and truck dealers are members of the National Automobile Dealers Association, breaking a record set a year ago. New NADA membership reached 20,160 of the 21,650 franchised new car dealers nationwide last year, an increase of 369. "This shows the effectiveness and value of NADA, as well as the commitment by dealers to work together for industry progress," said Alan Starling, NADA chairman. "As a result, we are a stronger and more unified industry, better positioned to serve our customers well in 2004 and beyond." WANADA met its membership goal regionally once again in 2003.

**DEAC Beats Records**

NADA's Dealers Election Action Committee hit an all-time single year fundraising record of nearly \$2.2 million in 2003. "This is only the second time in DEAC's 28-year history that we reached \$2 million in a single year," said Jim Willingham, DEAC chairman. A record 373 Presidents Club members, the most in the group's 16-year history, beat the goal of 350. The goal for 2004 is \$2 million and 375 Presidents Club members. As with NADA membership, WANADA eclipsed its 2003 goal for Washington Area dealers in DEAC, reaching 140% of the target.

**NADA/USA Today Dealer Innovation Award Brings Rewards**

Enter the Dealer Innovation Award competition by clicking on [www.nada.usatoday.com](http://www.nada.usatoday.com). Your dealership could be featured in national or regional editions of USA Today as well as NADA communications. The national winner also wins a trip to New York City for the awards presentation, to be held in conjunction with the New York International Auto Show this April. This year's focus is on innovation in bringing safety to the dealership's community, such as theft prevention, safe driving, seat belt use, proper use of child safety seats, personal safety and anti-drunk/drug driving initiatives.

**And the Winner is...**

Dr. Karl Smith visited the Washington Auto Show the morning it opened (Dec. 26) and took a chance on winning a 2004 Dodge Durango by guessing the number of Washington Wizards mini-basketballs stuffed into the Durango. He was closest to the mark in a contest sponsored by the Washington Area Dodge dealers, but was on a short vacation when the winner was announced. However, he was home in time to get the keys to his prize from Montrose Dodge Sales Manager Ralph Kolius. With Smith are his wife, Dr. Jayne DeLaney and their son Ryan.

**Thought for the Week...**

*The good neighbor looks beyond the external accidents and discerns those inner qualities that make all men human and, therefore, brothers.*

—Martin Luther King Jr. (1929 - 1968), 'Strength to Love,' 1963