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MEMORANDUM

TO: Jeff Flora, Southwestern Association

FROM: Jack Selzer and Jon Bunten

DATE: October 21, 2009

SUBJECT: New Mexico Statutes Regulating the Sale and Use of
ATVs and UTVs/Worksite Vehicles

Jeff,

Below are the questions you posed in you October 14th email regarding New Mexico law on the sale and use of ATVs and UTVs/Worksite Vehicles and our answers to your questions. Please let us know if you have any questions or need any clarifications.

1. **Q:** Does a Dealer have to have a license to sell an ATV and/or a Utility/ worksite Vehicle?

A: Yes. If there is a possibility that the ATV and/or Utility/worksite Vehicles being sold by the dealer will be used for recreational purposes, the dealer must be licensed by the New Mexico Taxation and Revenue Department. Here is why:

- New Mexico Statute Annotated (NMSA) § 66-4-1 states that a person shall not sell motor vehicles of a type subject to registration, unless licensed by the New Mexico Taxation and Revenue Department.
- Motor vehicles are broadly defined in NMSA § 66-1-4.11 as every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails.
- ATVs and Utility/worksite vehicles fall within the definition of motor vehicles.
- ATVs are generally subject to registration, unless certain exceptions apply (see response to question 5 below).
- Although Utility/worksite vehicles are generally not required to register, they must be registered if used for recreational purposes (see response to question 5 below).
- We assume that there is a high likelihood that each dealer will sell at least one unit for recreational use.
- Therefore, Dealers in New Mexico who sell ATVs and Utility/worksite vehicles must obtain a license from the New Mexico Taxation and Revenue Department.

2. **Q:** Is an ATV and a UTV/worksite vehicle classified as a motor vehicle?

A: Yes.

- "Motor vehicles" are broadly defined in NMSA § 66-1-4.11 as "every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails."
- ATVs and Utility/worksite vehicles fall within the classification of "motor vehicles."

3. **Q:** What is the definition by law of an ATV and a UTV?

A:

ATV (a.k.a. All Terrain Vehicles)

- "All Terrain Vehicles" are defined in NMSA § 66-3-1001.1(E)(1) as:
 - Motor vehicles;
 - 50 inches or less in width;
 - Having an unladen dry weight of 1000 pounds or less;
 - Travels on 3 or more low-pressure tires;
 - Has a seat designed to be straddled by the operator; and
 - Handlebar-type steering control.
- All Terrain Vehicles along with "off-highway motorcycles," "snowmobiles," and "recreational off-highway vehicles" may be generically referred to as "off-highway motor vehicles" (NMSA § 66-3-1001.1(E)).

UTV (a.k.a. Utility Terrain Vehicle)

- UTVs are not defined by New Mexico Statutes. However, if the UTV is used for recreational purposes, New Mexico law defines the vehicle as a "recreational off-highway vehicle" (see below). Here is why:
 - "Recreational off-highway vehicles" are defined as "motor vehicles designed for travel on four or more non-highway tires, **for recreational use** by one or more persons and having
 - a steering wheel for steering control;
 - non-straddle seating;
 - maximum speed capability greater than thirty-five miles per hour;
 - gross vehicle weight rating no greater than 1750 pounds;
 - less than 80 inches in overall width, exclusive of accessories;
 - engine displacement of less than 1000 cubic centimeters; and
 - identification by means of a seventeen-character vehicle identification number."
 - Additionally, the New Mexico Department of Game and Fish has the authority to subject other vehicles that fit the general profile of vehicles operated off the highway **for recreational purposes** to the classification of "off-highway motor vehicles."
 - Therefore, if a UTV is used for recreational purposes and fits the criteria stated above, it is defined by New Mexico law as a "recreational off-highway motor vehicle."

4. **Q:** Does the sale of a new or used ATV or UTV/worksite vehicle to a producer who will utilize the unit in production of ag qualify for the ag exemption?

A: Yes, but at the rate of only 50%. Here is why:

- 50% of the receipts from the sale of "vehicles that are not required to be registered under the Motor Vehicle Code may be deducted from gross receipts." (NMSA § 7-9-62).
- ATVs that are used solely for agricultural purposes are exempt from registration under the Motor Vehicle Code (NMSA § 66-3-1005(F)).
- UTVs that are not used for recreational purposes are not required to be registered under the Motor Vehicle Act.
- Therefore, ATVs and UTVs used exclusively for the production of agriculture are not required to be registered under the Motor Vehicle Code and qualify for the 50% reduction from gross receipts.

5. **Q:** Does the buyer have to register and title the ATV or UTV?

A: The operator's use of an ATV or UTV dictates whether registration is required. ATVs and UTVs used for recreational purposes on public land must be registered. All other ATVs and UTVs are exempt from registration. Here is why:

ATVs and UTVs used for recreational purposes on public land must be registered

- NMSA §66-30-1003 requires all Off-Highway Motor Vehicles to be registered unless an exemption applies.
- ATVs and UTVs used for recreational purposes are Off-Highway Motor Vehicles.
- Therefore, ATVs and UTVs used for recreational purposes must be registered in accordance with NMSA §66-3-104, **unless an exemption applies.**
 - Registration costs \$17 plus an amount not to exceed \$40 designated as a user fee.
- Exemptions:
 - Off-Highway Motor Vehicles operated exclusively on lands privately held are exempt from registration, provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fee; and
 - Off-Highway Motor Vehicles being used solely for agricultural purposes are exempt from registration.
- Failure to register or failure to possess such registry while operating the ATV or UTV in a recreational manner is a Class 1 violation, subject to a \$10 fine.

UTVs used solely for work/agricultural purposes are not required to be registered

- UTVs that are not used for recreational purposes are motor vehicles but are **not** Off-Highway Motor Vehicles.
- Under the general Motor Vehicle Code, only vehicles driven or moved upon a highway are required to be registered (NMSA § 66-3-1).
- We assume that UTVs used for agricultural purposes are prohibited from operating on highways similar to non-highway motor vehicles (See NMSA § 66-3-1011).
- Therefore, UTVs used solely for work/agricultural purposes are not required to be registered under either the Off-Highway Motor Vehicle Act or as the general Motor Vehicle Act.
- Additionally, NMSA § 66-3-1 exempts "implements of husbandry" from the general motor vehicle licensing requirements.
 - Implement of husbandry are defined as "a vehicle that is designed for agricultural purposes and exclusively used by the owner in the conduct of agricultural operations."

6. Q: If [the answer to 5 is] yes – does this apply to both ag exempt sales and non-exempt sales?

A: See the answer to question 5 above for an explanation of exemptions.

7. Q: Other Issues

A:

Noise:

- It is a violation of the Off-Highway Motor Vehicle Act to sell or offer for sale a vehicle that produces noise in excess of 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287"ö (see NMSA § 66-3-1010.3(E)).
- It is a Class 1 Violation to sell a vehicle that produces noise in excess of 96 decibels, subject to a penalty of \$10.

Required Information:

- Dealers of Off-Highway Motor Vehicles must distribute information provided by the [New Mexico department of game and fish] to off-highway motor vehicle purchasers on state laws, environmental and cultural considerations, customs, safety requirements, training programs, operating characteristics and potential risk of injury associated with off-highway motor vehicles." See NMSA § 66-3-1010.5.