

# SouthWestern Flash

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## In This Issue

Fall Education Workshops  
Legislative Watch  
Update on Kansas Streamlined Sales Tax  
Liens on Customer's Trade-Ins  
UCC Searches  
Signs of Recovery in Farm Equipment Sector

## Dates to Remember

**SouthWestern Fall Area Dealer Meetings** - See Calendar on next page  
**SouthWestern Association Annual Conference** - Jan. 22-24, 2004, Adams Mark Hotel, San Antonio, TX  
**2004 Western Farm Show**  
Feb. 21-23, Am. Royal Complex, Kansas City, Mo.

### SouthWestern Association

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[www.southwesternassn.com/register-email.htm](http://www.southwesternassn.com/register-email.htm)

## President Bush Backs Association Health Plans in Speech

During a recent speech to the Chamber of Commerce in Kansas City, President Bush outlined a "Six Point Plan for the Economy." The first item in Bush's plan is entitled "Making Health Care More Affordable and Predictable" and includes Association Health Plan legislation. President Bush's remarks concerning association health plans are below.

"First, people are more likely to find work if health care costs are reasonable and predictable. Adding an employee often requires more than paying a wage - you know that - it means providing benefits, such as health insurance. But, company costs for health benefits have been rising nearly 10 percent a year since 2000. These increases cut the capacity to create jobs, and we've got to deal with them. We've got to take this issue straight on.

"We can help small businesses by allowing them to join together to shop for health insurance, allowing them to pool their risks in what's called association health care plans. It makes sense to give small businesses the same bargaining power that big companies enjoy, so they can reduce health care costs. The House of Representatives passed a good bill. It is time for the Senate to act. I thank Senator Talent for his important leadership."

With Congress just getting back into Washington (they reconvened on September 3) from summer recess, President Bush's inclusion of AHP legislation in his new economic plan is certainly helpful in raising the profile of the legislation.

Senate Majority Leader Frist (R-TN) has indicated that the Senate will focus on the FY 2004 Appropriations bills, Medicare and energy legislation as its top priorities over the next 4-6 weeks. Beyond that, it is highly uncertain how long the House and Senate will be in session this fall.

Also, Senator Judd Gregg (R-NH), Chair of the Senate Health, Education, Labor and Pensions Committee, which has jurisdiction over the AHP legislation, is considering having a series of hearings this fall on health reform issues. One of the hearings likely will focus on the small group insurance market, and AHP legislation will be widely discussed in any such hearing. This hopefully will present a good opportunity to bring some attention to the AHP issue in the Senate.

*Source: Duane Musser, Schramm, Williams & Associates, Inc., Washington D.C. - SouthWestern Association legislative consultant.  
Excerpt of President Bush's speech from The White House website:  
<http://www.whitehouse.gov>*

## Upcoming South Western Association Education Workshops

Your South Western Association has education workshops planned for this fall that will benefit many areas of equipment dealerships. These workshops are led by experienced trainers in all areas of dealership management including sales, parts counter development, and service department operations.

### *Aftermarket Strategic Planning*

Wichita, Kan. - Nov. 4-5

Presenter: Bill Bohmer

Target Audience: Dealer Principals  
and Aftermarket Managers.

### *Counter Smarts: A Staff Development Program*

Hays, Kan. - Nov. 21

Columbia, Mo. - Dec. 10

Presenter: Ron Willis

Target Audience: Dealer Principals  
and Management Personnel

### *Managing Iron Salespeople*

Houston, Tx - Nov. 17

Ft. Worth, Tx - Nov. 19

Lubbock, Tx - Nov. 21

Kansas City, Mo. - Dec. 11

Oklahoma City, Ok - Dec. 12

Presenter: Frank Lee

Target Audience: Sales Managers

### *Advanced Sales Management*

Great Bend, Kan. - Nov. 13-14

Presenter: Frank Lee

Target Audience: Sales Managers

Dealers needing more information about any of the above workshops should contact Olivia Holcombe, South Western Association at 800-762-5616.

# South Western Association Fall Area Meetings

<u>Date</u>	<u>Type of Meeting</u>	<u>Location</u>
10/20/03	Equip. Area Meeting (p.m.)	Harlingen, TX
10/21/03	Equip. Area Meeting (p.m.)	Corpus Christi, TX
10/22/03	Equip. Area Meeting (p.m.)	Houston, TX
10/23/03	Equip. Area Meeting (p.m.)	San Antonio, TX
10/27/03	Equip. Area Meeting (p.m.)	Tyler, TX
10/28/03	Equip. Area Meeting (a.m.)	Denton, TX
10/28/03	Equip. Area Meeting (p.m.)	Abilene, TX
10/29/03	Equip. Area Meeting (a.m.)	Lubbock, TX
10/29/03	Equip. Area Meeting (p.m.)	Amarillo, TX
10/30/03	Equip. Area Meeting (p.m.)	Oklahoma City, OK
10/31/03	Equip. Area Meeting (a.m.)	Tulsa, OK

More information about the fall area dealer meetings will be included in upcoming issues of the Flash. Dealers needing more information at this time should call the Association office at 816-561-5323 or 1-800-762-5616 and ask for Olivia Holcombe or e-mail Olivia at [oholcombe@swassn.com](mailto:oholcombe@swassn.com).

## Update on Kansas Streamlined Sales Tax

Kansas Governor, Kathleen Sebelius, recently addressed the issue of the new Streamlined Sales Tax law in a letter to Kansas retailers. In the letter she notes the efforts of the Kansas Department of Revenue to help businesses implement the new rules regarding a "destination-based sourcing" of sales tax.

"The department is soliciting bids on an address-based system for assigning taxing jurisdictions, with the goal of making it available to retailers by mid-November. This new system will include a downloadable electronic database that will match a street address to the correct taxing jurisdiction and rate, and it should be more accurate than a five or nine-digit zip code database. It should also feature a window on the department's website in which the street address can be typed and the correct taxing jurisdiction and rate retrieved.

"The department is also in the process of developing a web-based electronic filing option for the new form ST36 which they will implement first in the November filing period (due

December 25th)."

In the letter, the Governor announced two important steps:

"First, I have directed the Secretary of Revenue to extend the "relaxed" approach of implementing the destination-based sourcing rules until further notice. You will be notified when this period will end. As part of this approach, the Department will continue to hold businesses harmless from sanctions if they cannot comply with the destination sourcing provisions of the new law.

"Many businesses are already in compliance, and I congratulate them. You should continue reporting under the new system. Others are waiting on software from the department, or other vendors. We will give you adequate time to convert your systems. In the meantime, please report to the best of your ability.

"Second, I will seek changes in the application and interpretation of the sourcing rules that will allow businesses the flexibility to conform without violating the agreement."

# Beware: A Dealer Will Be Liable To The Customer's Bank If There Is A Lien On The Customer's Trade-In

By Jack Selzer and Lance Formwalt  
Seigfreid, Bingham, Levy, Selzer & Gee, P.C.

All dealers accept trade-ins from customers. Some customers may have financial problems or are one bad drought away from financial problems. Almost all farm and construction equipment customers have liens against some or all of their assets. Without taking the precautions outlined in this article, this set of facts can lead to serious trouble for a dealer. In short, if a dealer accepts a trade-in from a customer that is subject to a lien, the general rule is that the dealer will be liable to the customer's bank for the value of the trade-in if the customer defaults on his loan.

We are aware that many dealers, knowingly or unknowingly, accept trade-ins from customers that are subject to a bank lien. When we talk about liens, we are not only referring to specific liens on the trade-in, but also the silent, but deadly, blanket lien that a customer gave the bank to secure an operating line of credit. Fortunately, in most cases, the customer does not default on his loan and the bank does not have motivation to seek out a dealer that has the bank's collateral. However, if a customer does default on his loan, a dealer will get an unwelcome surprise when the dealer becomes the subject of a lawsuit and faces potential damages equal to the value of the trade-in. In addition, if the customer is in bankruptcy, the dealer will not even have any recourse against the customer. We have seen this happen recently so pay attention – it could happen to you!

## Why is a dealer liable to the bank?

The Uniform Commercial Code (UCC) was developed to give secured creditors (banks) protection by establishing rules designed to provide certainty to the banks with respect to

the collateral the banks take when making loans to dealers and their customers. In the case of the trade-in problem, the UCC says that the bank's lien stays with the equipment after it is traded to the dealer unless the dealer is a "buyer in the ordinary course." Unfortunately, a dealer cannot be a "buyer in the ordinary course" unless the seller (the customer) typically sells that type of equipment. The problem is that the customer is not in the business of selling equipment – that is the dealer's business. What this means is that the bank's lien remains attached to the trade-in after the dealer takes title.

If the lien stays on the equipment, it means that the bank is entitled to the value of the equipment to satisfy the customer's debt to the bank. If the bank comes after the dealer for this amount, the dealer will be hit twice – first, by giving the customer credit for the trade-in value by reducing the cash purchase price for the new equipment and second, by paying the bank cash of approximately the same amount. This is unfair, but it is the law and dealers must be aware of this potential trap.

## What steps can dealers take for protection from this situation?

Dealers can limit their potential exposure in this type of situation by taking the following steps:

- Ask the customer if he has any liens on the trade-in (including any blanket liens given to a bank).
- Conduct an on-line UCC search against the customer to determine if any liens exist (see next section for more details).
- If it is determined that the trade-in has one or more liens against it, the trade-in should not be accepted unless the

bank or other creditor gives its written consent to the transfer of the trade-in free and clear of the lien. If asked, the bank will normally consent because the customer is getting replacement collateral with equity available to the bank that is equal to the value of the trade-in.

At a minimum, a dealer should always ask a customer if a trade-in is subject to any liens. However, it is strongly recommended that each dealer also do a UCC search since UCC searches can now be done quickly on-line and for a reasonable cost.

## What steps should a dealer take to perform a UCC search?

UCC searches used to take time. However, UCC searches can now be conducted quickly on the Internet for minimal cost. The attached document describes the process for on-line UCC searches for the following states: Colorado, Kansas, Missouri, Nebraska, New Mexico, Oklahoma and Texas.

A UCC search must be conducted under the exact name of the person/entity that owns the equipment. A search against a person's d/b/a will not reveal all liens against the owner.

As a practical matter, a UCC search will only be needed in the state in which the dealership is located. However, you are well advised to follow the rules listed below to determine the appropriate state for the UCC search:

- If the customer is a corporation, limited partnership or limited liability company, search in the state in which the customer is incorporated. Please note that this may not be the state in which the customer's operation is located.

Continued on next page

## Lien on Customer's Trade-In

Continued from page 3

- If the customer is an individual, search in the state where the customer resides.
- If the customer is a partnership, search in the state where the partnership has its principal place of business.
- Until July 1, 2006, a UCC search must also be conducted in the state in which the equipment was located in the four months prior to the trade-in date. The search rule is required because we are currently in the middle of a transition between two versions of the UCC.

If the UCC search identifies a lien against "equipment," "machinery," "tractors," "all personal property" or the specific piece of equipment, the trade-in will be covered by the lien and written consent from the bank or other creditor must be obtained. The consent can be as simple as a one-sentence letter authorizing the trade and stating that the traded equipment will be transferred free and clear of the bank's lien.

## Uniform Commercial Code (UCC) Searches

### Colorado

For a UCC search in Colorado, go to [www.sos.state.co.us](http://www.sos.state.co.us). Click on Search UCC and EFS Database. It will ask you to establish an account with a User ID and Password. Once you are established, click on Search by Debtor. Choose the one hour search for \$15, which is the least expensive search available. There is no fee to print documents found. It will then ask you for your credit card information. Once they have your credit card, you may go ahead with your debtor search.

### Kansas

For a UCC search in Kansas, you first must be a subscriber to this service. The cost to a subscriber is an initial subscription of \$75. There is a \$60 annual renewal fee. Go to [www.accesskansas.org](http://www.accesskansas.org) to sign up. To sign up, click on Online Services and

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then click on Become a Subscriber. Once you have completed this process, go to [www.kssos.org](http://www.kssos.org). Click on Business Services, then Uniform Commercial Code and then Debtor Search. Type in the name of the customer and it will show you all UCC liens filed against that customer in Kansas. It costs \$10 per search and is \$1 per page to print the actual UCC financing statement. The documents may take a day or two to be e-mailed to you by the Secretary of State's office.

### Missouri

For a UCC search in Missouri, go to [www.sos.state.mo.us](http://www.sos.state.mo.us) and click on Uniform Commercial Code, and then click on Research. Type in the name of the customer and it will show you all UCC liens filed against that customer in Missouri. The actual UCC financing statement may already be scanned into their system. If so, just click on it, the document will appear and you can then print it. If the document is not scanned into their system, call the Secretary of State at 573-751-4179 and request they scan the documents you need into their system. All of these services are free in Missouri.

### Nebraska

For a UCC search in Nebraska, go to [www.sos.state.ne.us](http://www.sos.state.ne.us). Click on Business & Licensing. Once there, click on UCC Services and then Request Subscription Information. Complete the information they request and they will mail you a form to be completed. Complete the form and return it to the Nebraska Secretary of State so that you can be a subscriber to their service. There is a \$50 annual fee plus a transaction fee of \$3.50 per debtor searched whenever you perform a search. If you want copies of the UCC documents it will cost 50 cents per page to print.

### New Mexico

For a UCC search in New Mexico, go to [www.sos.state.nm.us](http://www.sos.state.nm.us). Click on New Uniform Commercial Code

Information and Searches. Then click on UCC Online Research and type in the debtor's name. If the search finds your debtor, click on whichever File Number you wish to see and it will show the Filing Chain for Debtor. Click on File Number and the screen will show the UCC financing statement image, which then may be printed.

### Oklahoma

For a UCC search in Oklahoma, go to [www.oklahomacounty.org/coclerk](http://www.oklahomacounty.org/coclerk). Once there, click on UCC Public Access and then click on Search by Debtor. Type in the customer's name and it will show you all UCC liens against the customer in Oklahoma. Copies of the UCC financing statements cannot be printed from the web site.

### Texas

For a UCC search in Texas, go to [www.sos.state.tx.us](http://www.sos.state.tx.us) and click on Uniform Commercial Code. From there you must click on SOSDirect and set up an account with their office. After setting up an account you may perform the UCC search. The cost is \$15 per search and \$0.10 per page to print copies of the UCC financing statements.

## Farm Equipment Sector Showing Signs of Recovery

An article in the Wall Street Journal recently said that the turnaround in the farm equipment market is beginning, however sketchy the evidence has appeared. Stocks of the biggest manufacturers are allegedly reflecting the optimism.

July sales data from the Association of Equipment Manufacturers showed strength across all the major lines of farm products, including tractors and combines, helping to reinforce positive results from June. Grounding the prospects for improvements in demand, is the fact that farmers' balance sheets are strong, income levels are higher and recent changes in the tax code encourage the purchase of machinery. Crop prices, down from levels earlier in the year, still have

## Legislative Watch

**Link to Missouri Legislative Update**  
[www.swassn.com/molegislat.htm](http://www.swassn.com/molegislat.htm)

**Link to Kansas Legislative Update**  
[www.swassn.com/kslegislat.htm](http://www.swassn.com/kslegislat.htm)

**Link to Texas Legislative Update**  
[www.swassn.com/txlegislat.htm](http://www.swassn.com/txlegislat.htm)

**Link to Oklahoma Legislative Update**  
[www.southwesternassn.com/oklegislat.htm](http://www.southwesternassn.com/oklegislat.htm)

**Link to Arkansas Legislative Update**  
[www.swassn.com/arlegislat.htm](http://www.swassn.com/arlegislat.htm)

**Link to New Mexico Legislative Update**  
[www.swaassn.com/nmlegislat.htm](http://www.swaassn.com/nmlegislat.htm)

Access the latest state legislative updates by visiting the web-sites listed above.

remained above levels seen in the past few years and can push farmers into buying new equipment.

Deere Inc. helped solidify this view when it raised its outlook for the Canadian and U.S. agriculture market in its recent third-quarter earnings report. Some farm-related stocks are showing that investors already are banking on the improvement.

Shares in Agco Corp. are up about 45 percent since early July and CNH Global N.V.'s are up more than 50 percent. Deere stock is up about 30 percent over the same time frame, helped, in part, by strength in the company's construction and forestry equipment business.

*Source: Farm Equipment Manufacturers Association, Sept. 3, 2003*

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