



NewsLine

The Official Publication of the Tennessee Auctioneers Commission Volume XLV—Fall 2013

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Mission Statement

The Mission of the Tennessee Auctioneers Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation

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AUCTIONEER COMMISSION REPORT

The Auctioneer Commission met in August in the first floor meeting room of the Davy Crockett Tower. On the Agenda were numerous legal reports and a status update on the revised rules being drafted by legal counsel.

The staff reported on their review of numerous reciprocity agreements with other states and provided the agreements to the Commission to review. Currently, Tennessee has reciprocity agreements with the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, West Virginia and Wisconsin. The Commission will begin the review process to make sure Tennessee is current with all their reciprocal agreements.

The final rules proposal will be presented to the Commission at the October 2013 meeting, and the rulemaking process will begin. In short, this process will involve the following steps:

- ◇ The Commission will review the draft rules and if no modifications or changes are called for, they will approve the draft rules for publication as the "proposed rules".
- ◇ The Commission Staff will publicize the proposed rules for the general public and schedule a rulemaking hearing.
- ◇ The Commission, legal counsel and staff will review the feedback from the rulemaking hearing and make changes to the proposed rules as deemed appropriate.
- ◇ The rules will be resubmitted to the Commission with any corrections or modifications to be voted upon.
- ◇ If approved in final form, the rules will be sent to the Tennessee legislature for adoption.

The Commission also discussed the complaint process with emphasis on what happens when a complaint is received by the staff. Complaints are received in the TAC offices regularly; however, many are unable to be investigated or pursued because there is missing information.

When a complaint is filed with the Commission, under the Open Records Act, it becomes a public record. This means any identifiable information will be available to the public and may be used to identify the complainant. An identified complainant may provide legal counsel with contact information for clarification and also allows the auctioneer or auction company to know their accusers.

Tennessee also has a provision for anonymous complaints, but many of these cannot be processed because of insufficient information.

(Continued on page 3)

DISCIPLINARY ACTION REPORT

May 2013

Respondent: Kenneth N. Roebuck and Asset Recovery Auctions & Appraisals, Memphis, TN

Violation: Making a substantial misrepresentation; pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise; failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own, or failing to keep such funds of others in an escrow or trustee account; conduct which demonstrates improper, fraudulent, incompetent or dishonest dealings; and having a claim against the Auction Education and Recovery Fund paid for respondent's actions.

Action: Revocation of the individual and firm licenses, \$10,000 Civil Penalty, \$1,626 in costs, \$2,940 to reimburse the Auctioneer Education and Recovery Fund, and respondent shall not re-apply for a new auctioneer license until he has paid all civil penalties, costs and reimbursements set forth in the order, as well as any fees, the terms of his plea agreement with Gibson County Criminal Court are completely met and he has made application for an apprentice auctioneer license and served the requisite apprenticeship set forth in T.C.A. §62-19-111(b)(2).

August 2013

Respondent: Ridenour's Auction Sale, Oliver Springs, TN

Violation: Unlicensed auction firm

Action: \$ 1000 Civil Penalty

Calendar of Events

October 7, 2013 - Commission Meeting 9:00 am (Central)
Conference Room 1-B - Davy Crockett Building
500 James Robertson Parkway - Nashville, TN

October 14, 2013 - CE Seminar 9:00 am (Eastern)
The Car Barn
6721 Heritage Business Court - Chattanooga, TN

November 4, 2013 - Commission Meeting 9:00 am (Central)
Conference Room 1-B - Davy Crockett Building
500 James Robertson Parkway - Nashville, TN

December 2, 2013 - Commission Meeting 9:00 am (Central)
Conference Room 1-B - Davy Crockett Building
500 James Robertson Parkway - Nashville, TN

LEGAL REMINDER

The Tennessee Code expressly recognizes nine (9) exemptions to the licensing requirements for auctioneers. The ninth exemption reads as follows:

62-19-103. Exemptions.

(9) Any fixed price or timed listings that allow bidding on an Internet web site but that do not constitute a simulcast of a live auction.

At the August Commission meeting, the Commission reviewed a complaint involving an online auction that started with a fixed ending time, but because the software allowed for extended bidding at the end of the posted time, the sale was extended. After much discussion, the Commission reiterated that this exemption is offered for **fixed price or fixed-timed listings only** and once an auction is extended, neither the auction nor the person conducting the auction are exempt from the licensing requirements of TCA 62-19-102.

Did you Know? The Mockingbird was chosen as the official state bird by the TN Ornithological Society in 1933. Known for its amazing vocal abilities, the Northern Mockingbird can sing its own unique tunes, and, as its name implies, can mimic up to 200 natural sounds of other birds, insect and amphibians.

The Northern Mockingbird is also the state bird of Arkansas, Florida, Texas and Mississippi - all reciprocal states with the TN Auctioneer Commission.



Check This Out:

The TN Department of Revenue now offers an online search at their website, www.TN.gov/revenue, to verify the status of exemption certificates. Businesses using this service can ensure the entity making the purchase is qualified to be exempt from sales tax on the transaction before the sale is completed.

The use of this service allows business owners to simply type the account number and select the type of exemption certificate being presented. The search result shows whether the certificate is valid or invalid. This verification does not relieve the vendor of the responsibility of maintaining a copy of valid exemption certificates on file. This search also does not reveal any details about the business, protecting each business' privacy as required under Tennessee law.

"We are glad to add this convenient tool to our expanding list of electronic services," said Revenue Commissioner Richard H. Roberts. "Businesses across the state do a great job in voluntarily complying with our state's tax laws. Being able to verify the validity of certificates before accepting them is an excellent way for businesses to ensure their sales tax exemptions are proper before the transaction is made."

"The Tennessee Department of Commerce and Insurance is committed to principals of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator at 615-741-2177(TDD).

Let's look at a scenario:

Joe Public is aware of an unlicensed auction house that is owned and operated by his brother-in-law. One day, a co-worker complains to Joe that the auction house didn't pay him as a seller for items sold at the auction house. Joe and his co-worker decide to file an anonymous complaint with the Tennessee Auctioneer Commission, so they photograph the sign of the ABC Auction House and send the photo to the TAC with an un-signed note that says: "This is an illegal auction that doesn't pay their sellers." They mail the complaint with no return address.

In this example, the complainants have not provided the TAC with an address of the auction house or any contact information to follow-up. All the TAC has is a photograph of a sign that could be anywhere in the state, and an illegal auction is allowed to continue business as usual.

Let's look at this example in another context. With the same scenario, Joe Public faxes the complaint from his home fax number. Legal counsel contacts him to find out where the auction house is located, when they conduct their auctions, and so forth. However, once they have identified Joe Public, the complaint will show him as the complainant and this information will be provided to the auction house operator—his brother-in-law. At this point, Joe may decide to drop the matter entirely and not agree to provide the necessary information to the TAC, and again, no action is taken.

In order for Joe and his co-worker to file an anonymous complaint that can be properly investigated, the following information is needed:

- ◇ The name of the auction house owner.
- ◇ The address of the auction house.
- ◇ The date of the auction when the co-worker was not paid.
- ◇ Any other specific information that can assist investigators, such as a copy of the contract between the auction house and Joe's co-worker. While this will help the investigation, it will also identify the co-worker as the complainant.

The Commission and the staff are aware that many of the anonymous complaints received in their office are submitted by auctioneers who do not wish to be identified. Please be aware that while the State of Tennessee does allow for anonymous complaints, they have no provision for an identified complainant to remain anonymous. The Commission is also aware of the moral and ethical dilemma that is presented when an auctioneer weighs the options of filing a complaint against a colleague or turning a blind eye to a serious violation. The only position the Commission, the Commission staff and their legal counsel can take on this dilemma is to follow the letter of the laws of the state.

Keep watching the NewsLine for publication of the proposed rules as they become available. Also, please be sure to forward the licensees in your office their copy of the NewsLine.

It's All About the Sales Tax - Changes Effective October 1, 2013

T.C.A. 67-1-115 authorizes the commissioner [of Revenue] to require that any return, report, claim, statement, application or other document filed with the department [of Revenue], including any payment or remittance that accompanies such document shall be submitted electronically in a manner approved by the commissioner beginning no sooner than ninety (90) days after the commissioner has certified that a system is in place for the electronic submission of such document or payment. In cases where this electronic mandate creates a hardship upon a taxpayer, a paper filing is permitted. However, the commission may require that any paper filing be accompanied by a manual handling fee, not to exceed \$ 25 per return or a maximum of \$ 50 per year for any one taxpayer, to cover the cost of preparing, printing, receiving, reviewing and processing the paper filing.

Effective October 1, 2013, all sales and use tax returns are required to be filed electronically. Additionally, the Department of Revenue will no longer mail sales tax returns to taxpayers after this date. If you have **general questions** about electronic filing and payment requirements, contact the Revenue Call Center at 800-342-1003 for in-state or 615-253-0600 for local or out-of-state calls. If you have **specific questions on how to register for electronic filing or how to electronically file your return**, please call the Electronic Commerce Unit at 866-368-6374 for in-state calls or 615-253-0704 for local or out-of-state calls.

[Reprinted from Taxpayer Services Division - Notification of New Electronic Filing Requirements Notice]

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Continuing Education Seminar
Monday, October 14, 2013
9:00 am Eastern

The Car Barn
6721 Heritage Business Court
Chattanooga, Tennessee



The Car Barn is located just off Lee Highway and Highway 153 in North Chattanooga and it is conveniently located near the Hamilton Place Mall.

There is a Hilton Garden Inn and a Homewood Suites nearby.

Creating A Bidding Atmosphere

How the chant, the voice and the bidder's mindset can make or break your auction
4 Hours

Presenter: Justin Ochs

Justin Ochs has an outstanding auction resume. He is the 2012 International Auctioneer Champion, an announcer for Barrett-Jackson, and the owner of Diamond Ochs Enterprises in Hendersonville, TN. He will be instructing on the power of the voice, proper voice care, and the role of the voice in the psychology of the auction sale.

Tennessee Sales & Use Tax
2 Hours

Presenter: Billy Trout, TN Dept. of Revenue

Billy Trout is the manager of Communications, Education, and Taxpayer Accounting for the Tennessee Department of Revenue. He serves as the Department's public information officer, as well as managing taxpayer education, accounting services, and Revenue's six taxpayer assistance offices located throughout the state.



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