



HENRY McMASTER  
ATTORNEY GENERAL

October 7, 2009

The Honorable Joan Brady  
Member, House of Representatives  
Post Office Box 61047  
Columbia, South Carolina 29260

Dear Representative Brady:

We understand you desire an opinion of this Office as the interpretation of section 56-15-60(B) of the South Carolina Code. Specifically, you ask that we interpret section 56-15-60(B) to determine when the twelve-month period in which automobile manufacturers may conduct audits for sales incentives, service incentives, rebates, or other forms of incentives commences.

#### **Law/Analysis**

Section 56-15-60(B) of the South Carolina Code (2006) provides as follows: "An audit for sales incentives, service incentives, rebates, or other forms of incentive compensation may include only the twelve-month period immediately following the date of the termination of the incentive compensation program. This limitation is not effective in the case of fraudulent claims."

In your letter, you state:

The South Carolina Automobile Dealers Association and the National Automobile Dealers Association drafted this code section and interpret it to simply mean that if a rebate program that is offered to the consumer runs from June 1 to August 31, then the manufacturer has 12 months from August 31 to audit the automobile dealer for any rebates provided the customer during the life of that program. A manufacturer has recently argued that they have 12 months from the date that the dealer is reimbursed by the manufacturer for the rebates provided to the customer. However, there is no language in the statute that supports this belief. If we were to follow that line of

thinking, then the manufacturer could pay the dealer months later or whenever they want and audit the dealer for the next 12 months - essentially prolonging the 12 month audit time period. It was certainly not the intent when this legislation was passed to allow the audit time period to be arbitrary. It was the intent to provide a defined audit period with a specific beginning and end.

In order to interpret section 56-15-60(B), we employ the rules of statutory interpretation, the primary of which is to ascertain and effectuate the intent of the Legislature. Berkeley County Sch. Dist. v. South Carolina Dep't of Revenue, 383 S.C. 334, 345, 679 S.E.2d 913, 919(2009). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." McClanahan v. Richland County Council, 350 S.C. 433, 439, 567 S.E.2d 240, 242 (2002).

The plain language of section 56-15-60(B) states that the twelve-month audit period begins "following the date of the termination of the incentive compensation program." We read the phrase "termination of the incentive compensation program," as stating the point at which the dealer may no longer take advantage of the program, not when the dealer receives payment under the program. Additionally, the section 56-15-60(B) makes no mention that payment by the manufacturer impacts the commencement of the audit period. Therefore, the plain language of the statute indicates that the twelve-month audit period begins when the incentive compensation program ends. In other words, in the example you provided, if a manufacturer offers a rebate program customers from June 1 to August 31, the audit period would begin on August 31 and end twelve months thereafter.

Our interpretation of when the audit period begins under section 56-15-60(B) is further supported by this provision's legislative history. The Legislature added subsection (B) of section 56-15-60 via act 287 of 2000. 2000 S.C. Acts 2041. This act contains a number of provisions aimed at protecting automobile dealers in South Carolina. Id. With regard to section 56-15-60(B), the description of the act provides the amendment to this provision relating to dealers' claims for compensation is to "limit the audit period for incentive compensation programs . . . ." Thus, as you mentioned in your letter, the intention of the Legislature with regard to section 56-15-60(B) appears to be to limit the time frame in which a manufacturer is entitled to audit a dealer with regard to incentive compensation programs. This intention is expressed in section 56-15-60(B) as it states the term for the audit "may include only the twelve-month period immediately following the date of the termination of the incentive compensation program." (emphasis added). This use of the term "only" emphasizes the Legislature's intention to limit the time frame in which a manufacturer has to conduct an audit. As such, if we were to determine that the audit period under section 56-15-60(B) does not commence until after payment is made by the manufacturer to the dealer, the length of time

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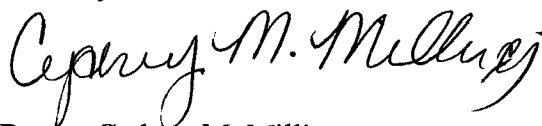
for audit would extend indefinitely. Accordingly, this interpretation would frustrate the intent of the Legislature.

### **Conclusion**

Based on our plain reading of section 56-15-60(B), we are of the opinion that the twelve-month audit period established pursuant to this provision begins when the incentive compensation program ends and not when the dealer receives payment from the manufacturer under the program.

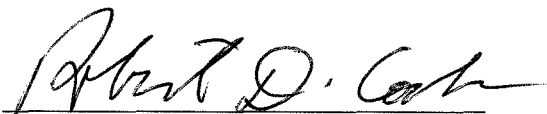
Very truly yours,

Henry McMaster  
Attorney General



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