

Tax Evasion Related to the Purchase of Privately Sold Used Vehicles in Ontario

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1. Objectives

The topic of tax evasion related to the purchase of used vehicles in Ontario was chosen so that research and analysis could be performed into the relatively small, but unique, private used vehicle market. Throughout the research paper, we will focus on how the Ontario Ministry of Finance (MOF) levies sales tax on items sold within this sector and how those taxes may be evaded.

The private sale of used vehicles makes up a significant portion of total vehicle sales in Ontario but has a separate sales tax applied when compared to new and used vehicles sold through a licensed motor vehicle dealer. This sales tax is referred to as Retail Sales Tax (RST) and is only applied to a limited number of very specific items, compared to Harmonized Sales Tax, which is levied on virtually all consumer goods.

This paper seeks to promote a better understanding of the history and purpose of RST along with how RST is applied to used vehicles in Ontario and how this application compares to other provinces throughout Canada. We will then focus on how individuals register privately purchased vehicles and how individuals are able to evade paying the appropriate RST on the privately purchased used vehicles. An analysis of how investigative and forensic accountants (IFA's) can use their skills to investigate this RST evasion and the procedures IFA's perform to help mitigate this RST evasion will also be undertaken. Finally, we will conclude with recommendations related to the tightening of policies and procedures surrounding the registration process for privately sold used vehicles.

1. Implementation of HST and History of RST in Ontario

On July 1st, 2010, Harmonized Sales Tax (HST) took effect and replaced RST in the Province of Ontario¹. RST remains on certain insurance premiums and benefits plans and on the private purchase of specified used vehicles from non-HST registrants.

HST is considered a value-added tax by the provincial government at the time of implementation. “A value added tax is a multi-stage tax on consumption that is applied throughout the supply chain regardless of whether the purchase is for the use by a business or consumer, but that allows most businesses to be reimbursed for the tax paid on their business inputs through the use of input tax credits”². Conversely, RST is not considered a value added tax because at every step in the supply chain, the tax is applied and there is no rebate available to the purchaser. By the time the product reaches the end consumer, there is a compound effect of RST being applied on top of a product that previously had RST charged.

A newsletter authored by Bruce Ratford and published by the Municipal Finance Officers Association of Ontario called “*HST – WHAT? WHEN? WHY? WHERE? WHO? An introduction to Ontario’s new sales tax regime*” stated the purpose of the implementation of HST was to reduce the total tax passed along to the business and consumer, thereby increasing business profits and disposable income of consumers³. In theory, this implementation creates new jobs as businesses have additional profits to hire new employees and stimulate the economy

¹ (Transition to the Harmonized Sales Tax in Ontario and British Columbia and Winding Down of Provincial Sales Tax in Ontario and British Columbia, 2010)

² (Duncan, 2010)

³ (Ratford, 2010)

through consumer spending. The findings of a 2004 study titled *Taxation and Economic Efficiency: Results from a Canadian CGE Model*⁴ illustrated that reducing sales taxes on new capital goods had a greater benefit on the economy when compared to reducing personal and corporate income tax.

RST was implemented in the Province of Ontario on March 9, 1961⁵. An economic study performed by the province of Ontario in 1967 stated that for trade-in durable consumer goods “the general rule on trade-ins be that tax is due only on the difference between the value of the goods purchased and that of the goods traded in. There is no point in the treasury gaining because a durable good item, such as an automobile or sewing machine, happens to be turned over a number of times during its lifetime.”⁶ The paper then states “when sales tax is paid on a durable consumer good, which yields its utility to the purchaser only over a period of time, there is a prepayment of tax. It should be noted that the tax authority gains compound interest on this prepayment, and the purchaser of the taxed consumer durable correspondingly loses.”⁷ Currently in the Province of Ontario, the calculation of tax on privately sold used vehicles does not take into consideration the tax paid by previous owners.

“A much more important consideration is the fact that the original purchaser often does not retain the durable consumer good until it is ready to be junked. Thus, the trade-in problem arises. Although Ontario law requires each successive purchaser to report his purchase of a used durable consumer good, and pay tax on it, the rule cannot be enforced except for

⁴ (Baylor & Beausejour, 2004)

⁵ (Poole, 1967)

⁶ (Poole, 1967)

⁷ (Poole, 1967)

automobiles.”⁸ This statement provides a strong argument indicating that when tax is paid for a new vehicle purchased at a dealership, the tax is for the lifetime of the vehicle, however as it currently stands, each time the vehicle is traded in, additional tax is paid, with no relief for the tax paid by the previous owner.

The paper eventually states “we conclude that when the taxing authority permits exemption from tax of the trade-in value of a durable consumer good there is no multiple taxation or compounding of the tax on the commodity. On the other hand, as stated previously, there is also no account taken of the fact that so long as an article remains in use the tax authority has enjoyed prepayment of tax, plus compound interest on the prepayment”⁹. While this paper was published in 1967, this conclusion indicating that there is double taxation on durable consumer goods has not changed the policy related to charging RST for private used vehicle transfers. There is currently no exemption for the taxes paid by previous owners, unless the vehicle is traded into a motor vehicle dealership, at which point the tax levied is HST and not RST.

Based on the above findings, it would be reasonable to assume that HST would also be transitioned to private used motor vehicle sales, however, in Ontario that is not the case. RST remains on the purchase of specified used vehicles. In a 2020 Globe and Mail article titled “*Why Should I Have to Pay Taxes On a Used Car?*”, George Iny, president of the Automobile Protection Association theorized “The used car dealers lobbied to have the consumer tax increased and to apply book values to consumer vehicle sales, making it more attractive to

⁸ (Poole, 1967)

⁹ (Poole, 1967)

trade in your vehicle to a dealer rather than sell it for more privately”¹⁰. A public search for the decision on why RST remains on privately sold used vehicles did not yield any results and there has been no comment from the MOF, so this theory cannot be verified. While this paper does not seek to exclude the purchase of used vehicles from private sellers, this policy decision on RST has led to confusion among the purchasers of used vehicles and is discussed further in “Section 4 - Factors Leading to Tax Evasion”.

¹⁰ (Tchir, 2020)

2. Used vehicle Sales in Canada

Statistics Canada estimates used car dealer sales were between \$11.95B to \$13.65B from 2017 to 2019. For the same period, new car dealer sales were estimated to be between \$123.1B and \$128.9B.¹¹ While both vehicle sales markets generate significant tax revenue for their respective provinces, the used vehicle market for vehicles sold by private sellers also generates a significant amount of provincial tax revenue.

While there are no credible data sources that provide data related to used vehicle private sales in Ontario, or elsewhere in Canada, we can extrapolate a reasonable estimate of used vehicle private sales based on private vehicle listings on the popular vehicle sales website Kijiji.ca.

Data sourced from Kijiji.ca on May 28, 2022, showed there were 21,873 listings in Ontario for used vehicles being sold privately for up to \$100,000. To estimate the potential provincial taxes generated from a small segment of the market, we broke down the listings by sales dollar value and assigned an average sales value to the listings. For calculation purposes, we reasonably assumed that it took one month to sell a vehicle listed on Kijiji.ca. We then calculated the estimated sales dollars and potential RST revenue that the Province of Ontario may generate in one year. Below is the analysis of data extrapolated from Kijiji.ca:

¹¹ (StatisticsCanada, 2022)

Used Vehicle Selling Prices on Kijiji.ca (May 28, 2022)

Price Range (\$)	Number of Listings¹²	Average or Assumed Price within the Price Range (\$)	Estimated Sales (\$)
Up to 5,000	4,888	2,500	12,220,000
5,001 - 10,000	5,408	7,500	40,560,000
10,001 - 15,000	3,251	12,500	40,637,500
15,001 – 20,000	2,204	17,500	38,570,000
20,001 - 30,001	2,566	25,000	64,150,000
30,001 - 100,000	3,556	45,000	160,020,000
Monthly Total	21,873		\$356,157,500

Based on the above calculations and assumptions, there are approximately \$356 million worth of private motor vehicle sales in Ontario each month generated solely from advertisements posted on Kijiji.ca. If sales are assumed to be relatively steady from month to month, this would amount to an estimated \$4.3B in private motor vehicle sales each year. At 13% RST, this would result in \$555 million annually in RST revenue resulting solely from privately sold vehicles

¹² (Kijiji Cars and Trucks In Ontario, 2022)

advertised on Kijiji.ca. This amounts to approximately 2% of the total sales tax, inclusive of RST and HST, received by the Ontario provincial government in 2020-2021 of \$26.5B¹³.

¹³ (TreasuryBoardSecretariat, 2020-2021)

3. Factors Contributing to RST Evasion on Privately Sold Vehicles in Ontario

There are several contributing factors that lead to RST evasion that can be appropriately classified using the three categories of the fraud triangle: Motivation, Opportunity, and Rationalization.

Motivation is defined as the reason why an individual would commit tax evasion, while rationalization is the internal weighing of why the individual feels they can avoid the tax. We will try to understand the motivation and rationalization of RST evaders by determining how much the public knows about RST on private motor vehicle sales, their opinions on the legislation and why these factors may lead to individuals attempting to avoid paying RST on used motor vehicles.

Opportunity is defined as the weakness in policies or controls that allows individuals to exploit the policies and controls for their personal financial gain. To review where potential tax evaders may have an opportunity to avoid paying RST, a review of the *Retail Sales Tax Act* sections related to specified used vehicle sales will be conducted along with a review of how vehicle appraisers may also aid in reducing the amount of RST paid on private used vehicles purchases.

4.1 Review of the Retail Sales Tax Act in Ontario

To determine how individuals can avoid or reduce RST on used vehicles upon registration, the *Retail Sales Tax Act*¹⁴ sections on specified vehicles must be reviewed.

Definitions

¹⁴ (Retail Sales Tax Act, R.S.O. 1990, c. R.31, 2020)

Section 4.2(3) of the *Retail Sales Tax Act* contains the definitions for the terms used in the proceeding sections of the Retail Sales Tax Act:

“fair market value”, in relation to a specified vehicle, means the greater of its fair value or its average wholesale price as determined in the manner prescribed by the Minister;

“specified vehicle” means, for the purposes of the tax imposed under subsection (1.1),

- a) a motor vehicle or other vehicle for which a permit is required under the Highway Traffic Act to operate on a highway,*
- b) an off-road vehicle or motorized snow vehicle for which a permit is required under the Off-Road Vehicles Act, or the Motorized Snow Vehicles Act,*
- c) aircraft,*
- d) a vessel, or*
- e) another type of vehicle prescribed by the Minister.¹⁵*

Section 4.2 - Tax on Specified Vehicles

The following section provides guidance on how to calculate RST on specified used vehicles in Ontario:

Section 4.2(1.1) states for specified vehicle purchases after June 30, 2010 *“Every purchaser of a specified vehicle shall pay to Her Majesty in right of Ontario a tax in respect of the consumption or use of the specified vehicle computed at the rate of 13 per cent of the fair market value of the specified vehicle if the purchaser,*

¹⁵ (Retail Sales Tax Act, R.S.O. 1990, c. R.31, 2020)

- a) *acquires the vehicle in Ontario after June 30, 2010; or*
- b) *acquires the vehicle in Canada but outside Ontario and,*
 - i) *brings the vehicle into Ontario after June 30, 2010, or*
 - ii) *receives delivery of the vehicle in Ontario after June 30,¹⁶*

Section 4.2(2) includes a clause for exceptions if severe damage or excessive use exists:

“Despite subsections (1) and (1.1), if both the fair value and the appraised value, as defined by the Minister, of a specified vehicle are, by reason of severe damage or excessive use, less than the average wholesale price of the specified vehicle as determined in the manner prescribed by the Minister, the tax payable under subsection (1) or (1.1) in respect of the consumption or use of the specified vehicle is the greater of the fair value or appraised value multiplied by the tax rate set out in subsection (1) or (1.1), whichever applies.”¹⁷

Offences

Under section 32(4) of the *Retail Sales Tax Act* “every person is guilty of an offence who has,

- a) *made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations;*
- b) *to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of the vendor, purchaser or registrant;*

¹⁶ (Retail Sales Tax Act, R.S.O. 1990, c. R.31, 2020)

¹⁷ (Retail Sales Tax Act, R.S.O. 1990, c. R.31, 2020)

- c) *made, or assented to or acquiesced in the making of, false or deceptive entries or omitted, or assented to or acquiesced in the omission, to enter a material particular in records or books of account of a vendor, purchaser or registrant;*
- d) *wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or*
- e) *conspired with any person to commit any offence described in clauses (a) to (d)."*¹⁸

Analysis of The Retail Sales Tax Act

Based on sections 4.2(1) and 4.2(1.1) of the *Retail Sales tax Act*, a buyer of a used vehicle purchased after June 30, 2010, from a non-HST registrant (private seller) must pay 13% RST on the vehicle at the time of registration. The 13% RST is calculated based on the vehicle's fair market value, which is defined as the higher of:

- a) the average wholesale price; and
- b) the declared selling price.

Section 4.2(2) of the *Retail Sales Tax Act* states if the specified vehicle is purchased with severe damage or excessive use, the buyer can obtain a Motor Vehicle Appraisal. If an appraisal is obtained, the 13% RST is based on the higher of:

- a) the declared selling price; and
- b) the appraisal value.

¹⁸ (Retail Sales Tax Act, R.S.O. 1990, c. R.31, 2020)

In determining the calculation of the tax payable the MOF must rely on two values provided by outside parties. The first value is the declared selling price provided between the two parties. This value is used both when the vehicle has excessive wear or damage and when the vehicle is in good condition. The second value is the vehicle appraisal value provided by the appraiser to the buyer of the vehicle and subsequently presented to Service Ontario at the time of registration.

If a used vehicle purchaser submits a “lowball” declared purchase price, MOF can mitigate the risk of tax evasion on the specified used vehicle sales when there is no excessive damage by calculating the RST payable on the higher of the average wholesale price and the declared purchase price. By doing this, the MOF relies on the average wholesale price of the vehicle to fairly value the vehicle, which is obtained using an independent third-party source - the Canadian Red Book. Valuing the vehicle using an independent third-party source ensures that when the value of the vehicle is “misconstrued” by the buying and/or selling parties, the MOF can base their RST calculation on an independent third-party value.

Vehicle Appraisals in Ontario

The opportunity for tax evasion arises with the introduction of the vehicle appraisal, which is used to determine the value for a vehicle with excessive wear or damage. While the vehicle appraisal may be performed by an independent third party, similar to relying on the Canadian Redbook value for the average wholesale price, the vehicle value documented on the Motor Vehicle Appraisal Record is based on the knowledge, integrity and interpretation of the appraiser. The appraisal service, often provided by a licensed mechanic, is typically paid for by

the private vehicle purchaser or the seller, unlike the MOF, who provides the vehicle's average wholesale value. Whenever there is a payment for services rendered, such as a vehicle appraisal, there is an opportunity for the purchaser of the service to provide a "kickback" to the service provider, based on the service provided.

Vehicles Purchased Outside of Ontario

There is also the opportunity for RST evasion when a specified used vehicle is purchased privately from outside the Province of Ontario. In these instances, RST is based on the declared selling price. While it is not explicitly defined in the *Retail Sales Tax Act*, the Ontario Ministry website of specified used vehicles states "Generally, when a specified vehicle is purchased privately in another Canadian province or territory and is brought or delivered into Ontario for use, RST at the rate of 13 per cent applies to the purchase price of the vehicle"¹⁹. This means for vehicles purchased outside of Ontario, the MOF does not rely on any third-party declaration of value or average wholesale value, which creates the opportunity for the used vehicle purchaser to present a fictitious bill of sale to lower the amount of RST payable.

4.2 Motivation and Rationalization of Tax Evaders

When dealing with a tax levied by the government, the primary motivation for individuals to evade RST on private used vehicles sales is to reduce the total purchase cost of the used vehicle. While the details regarding the registration process for a used vehicle and the associated fees and taxes that must be paid are publicly published on the MOF Website²⁰, it is not difficult to imagine individuals registering their newly purchased used vehicle for the first

¹⁹ (Specified Used Vehicles , 2022)

²⁰ (Buy or Sell a Used Vehicle in Ontario, 2022)

time, only to realize they also must pay RST at the time of registration. When RST is added to the cost of the vehicle, some used vehicle purchasers may believe they overpaid for the vehicle or exceeded their budget. While there have been numerous guilty pleas in Ontario regarding charges under the *Retail Sales Tax Act* for specified used vehicle purchases, there are no published cases. As a result, it would be difficult to gain an understanding of the motivation for those individuals who have been charged and fined under the *Retail Sales Tax Act*, in relation to specified used vehicle purchases.

Rationalization on the other hand, is an area that we can review by considering consumer sentiment. On the popular message forum Reddit.com, a post was made on March 20, 2022, in the Personal Finance Canada message board asking, “Why is there a tax on used Cars?”²¹. The original poster states that they are moving to Canada from Europe and are looking into buying a car. They are shocked to find out that they are required to pay RST on a used vehicle and ask for the justification of charging a tax twice on the same piece of equipment.

The post grew to have over 800 comments from different users in the message forum. The top post on the message board, which had over 2,400 “likes”, stated that tax on used vehicles was “one of the dirtiest cash grabs in our tax system.”²²

Another poster stated that during the pandemic, due to the rise in used car prices, they purchased a Honda Civic for \$15,000. When they registered the vehicle, they discovered that the book value of the vehicle was \$9,000. At that point they declared the sale price to be \$8,000, so the individual only ended up paying tax on the blue book value, the equivalent of the

²¹ (Personal Finance Canada - Why is There Tax On Used Vehicles, 2022)

²² (Personal Finance Canada - Why is There Tax On Used Vehicles, 2022)

Canadian Red Book²³. This creates an interesting conversation around what to do when the used car market increases faster than the Red Book Value and will be discussed in section 5 of the paper.

Other posts included one individual who stated, “the system is so flawed that a car that is hypothetically sold 20+ times over the course would generate MORE tax income for the government than the initial value of the car.”²⁴

Based on the above statements, it is apparent that the average consumer is not aware of why RST is charged on privately sold used vehicles. Other used goods commonly sold over peer-to-peer marketplaces such as Facebook marketplace are not taxed, so buyers often question why there is a tax on other private sales. An open-sourced web-based search on why RST is charged on used vehicle sales does not yield any results, which compounds the confusion the average consumer might have.

This sentiment that tax on a good that changes hands is unfair is echoed in section 2 by Poole, who argues that sales tax on a durable good that changes hands is a form of double taxation.

4.3 Role of Vehicle Appraisers

As stated under the section 4.2(2) of the Retail Sales Tax Act, the purchaser of an excessively used or severely damaged vehicle may choose to have the vehicle appraised²⁵. This appraised value will then be compared to the declared purchase price and the higher value is used to calculate the RST. Because the appraisal value is provided by a third party external to the

²³ (Personal Finance Canada - Why is There Tax On Used Vehicles, 2022)

²⁴ (Personal Finance Canada - Why is There Tax On Used Vehicles, 2022)

²⁵ (Retail Sales Tax Act, R.S.O. 1990, c. R.31, 2020)

Ministry of Finance, it is important to understand how the vehicle appraiser may play a role in an individual evading taxes related to the purchase of a used vehicle.

Per the Ontario website on RST on Used vehicles an appraiser must complete a Motor Vehicle Appraisal Record and “The appraised value of the vehicle will only be accepted if the appraisal is completed by:

- a licenced motor vehicle dealer that has a registration/dealer number issued by the Ontario Motor Vehicle Industry Council. The registration/dealer number must be recorded on the appraisal form.
- an independent motor vehicle appraiser that has been issued an appraiser number by the Ministry of Finance. The appraiser number must be recorded on the appraisal form”²⁶.

The Ontario Motor Vehicle Industry Council (OMVIC)

As stated above, the registration/dealer numbers are issued by the Ontario Motor Vehicle Industry Council to new and used car dealerships. Once a license is issued, the dealership can perform vehicle appraisals.

Per the OMVIC website, “The Motor Vehicle Dealers Act, 2002 (MVDA) is administered and enforced by OMVIC on behalf of the Ministry of Government and Consumer Services.”²⁷ As the licensed motor vehicle dealers who perform the appraisals are bound to the MVDA, we will review the MVDA to identify if there is legislation that applies to the performance of appraisals.

²⁶ (Specified Used Vehicles , 2022)

²⁷ (Ontario Motor Vehicle Inspection Council , 2022)

OMVIC also mandates a Code of Ethics that all automobile dealerships and salespersons must adhere to. A review of relevant sections in the Code of Ethics will also be undertaken.

Motor Vehicle Dealers Act

While there are no explicit sections of the MVDA that are dedicated to licensed dealers performing vehicle appraisals, we can review other sections that provide more broad guidance on the practices by dealers and salespersons. Sections 26 - 28 provides guidance on restrictions related to dealerships and appraisers in the motor vehicle trade:

"Falsifying information

26 *No registrant shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a trade in motor vehicles. 2002, c. 30, Sched. B, s. 26.*

Furnishing false information

27 *No registrant shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false or deceptive information or documents relating to a trade in a motor vehicle. 2002, c. 30, Sched. B, s. 27.*

False advertising

28 *No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in motor vehicles. 2002, c. 30, Sched. B, s. 28.*²⁸

For the purpose of used motor vehicle appraisals, these sections can be interpreted as MVDA offences, where an appraisal is obtained from a licensed dealership or salesperson and the appraisal contains false or misleading information. However, it is unclear whether OMVIC reviews allegations of falsifying and furnishing false appraisal information by registered dealerships. A review of OMVIC Discipline and Appeals Committee Decisions for the years 2018 - 2022 indicates that no discipline has been levied against dealerships providing false/misleading/deceptive appraisals.

Code of Ethics

The *Code of Ethics and Operations of Committees* under the *Motor Vehicle Dealers Act*, contains the following sections relating to practices that are performed by a dealer or appraiser:

“professionalism

*9(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant. O. Reg. 332/08, s. 9 (1).”*²⁹

²⁸ (Motor Vehicle Dealers Act, 2002)

²⁹ (Code of Ethics and Operations of Committees, 2002)

*(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness. O. Reg. 332/08, s. 9 (2).*³⁰

These sections indicate that Ontario motor vehicle dealers and salespersons should not conduct any business that would be considered “unprofessional”.

Kijiji.ca Advertisements

To determine if there are any blatant contraventions of the Motor Vehicle Dealers Act or Code of Ethics, a review of Kijiji.ca advertisements for vehicle appraisals was performed to identify any false advertisements or instances of unprofessional conduct.

To conduct the analysis, the phrase “Vehicle Appraisal” was searched on kijiji.ca on May 17, 2022 and resulted in 63 matches. The first five ads were from Markham-Finch Auto, Superior Auto Group, Instant Car Appraisal, an individual who is identified on the ad as “Tomasz” and Rick Jackson Park and Sell. These five selected advertisements were reviewed to determine whether there were any indicators of false information related to used vehicle appraisals and/or RST associated with used vehicle sales.

Markham-Finch Auto

The advertisement indicates appraisals start at \$40 and includes “DON’T PAY BLACK BOOK VALUE, SAVE \$\$\$ TAXES When Buying Vehicles from Private Sellers”. This advertisement also states that they are now offering online appraisals and they certify appraisals “for any type of vehicle, whether its your car, truck, motorcycle or RV. Any model or any year. We give you a

³⁰ (Code of Ethics and Operations of Committies , 2002)

legal document which puts a value on your vehicle”. The ad also indicates that they are a “certified used vehicle appraisal - Service Ontario Approved”. At the bottom of the advertisement they state, “A vehicle appraisal helps you save on HST when transferring ownership based on the following criteria: high mileage, accident history, mechanical issues, interior/exterior condition, other”.

Superior Auto Group Inc.

The Superior Auto Group Inc. advertises motor vehicle appraisals for \$80 and states “BUYING OR SELLING A USED CAR? BOOK VALUE MORE THAN YOU PAID? WE OFFER QUICK SERVICES FOR MTO - MOTOR VEHICLE APPRAISAL FORMS TO SAVE YOU MONEY ON TAXES! QUICK AND EASY APPRAISAL DONE ON SPOT”

Instant Car Appraisal

Instant Car Appraisal advertises appraisals for \$40 with the description “Don’t pay HST tax on Wholesale/Book Value (SAVE \$100’s). 15 Minute Service (online, Mobile, Local). Save \$100’s on HST if a vehicle has a high odometer reading (km), excessive wear or severe damage, and previous history. Pay HST on the vehicle’s actual market value and not on the wholesale/book value listed on the UVIP at Service Ontario. “

Tomasz Vehicle Appraiser

Tomasz Vehicle Appraiser advertises appraisals for \$40 and states “CERTIFIED CAR APPRAISALS DON’T PAY BLACK BOOK VALUE, SAVE \$\$\$ TAXES When Buying Vehicles from Private Sellers

MTO APPROVED. An appraisal saves you money on HST tax when transferring owners of a vehicle. We will try to lower the appraised value to cut your HST Tax Cost.”

Rick Jackson Park & Sell

The advertisement states “SAVE LOTS OF MONEY TRANSFERRING OWNERSHIP AT SERVICE CANADA (MTO) AND WE CAN SAVE YOU LOTS OF MONEY ON THE USED VEHICLE APPRAISAL. PAY HST TAX ON THE VEHICLES ACTUAL VALUE AND NOT THE MINISTRY VALUE.” The appraisal cost posted on the advertisement is \$53 and the appraisal can be performed online or in person.

Analysis of Kijiji.ca Advertisements

The five vehicle appraisers offer appraisals ranging in price from \$40 and \$80. Two of the appraisers offer to perform the appraisal through means other than in person, via online or mobile. Given the nature of providing a vehicle appraisal, it is unclear how the appraiser can perform an accurate assessment of the vehicle without seeing the vehicle in person and taking the vehicle for a test drive.

It is interesting to note that three of the five appraisers incorrectly reference HST when explaining how the tax will be calculated on the registration of the used motor vehicle - instead of RST. While this distinction is not important to the consumer as they are still paying 13%, the fact that the appraisers do not know which tax is applied to the used motor vehicle purchase may indicate the appraisers lack of understanding the relevant legislation.

Markham-Finch Auto and Instant Appraisals are the only appraisal advertisers reviewed that indicate the appraisal will save you money if the vehicle has excessive wear or high mileage. The other three appraisers reviewed do not mention what the appraisal is intended to do - correctly and accurately value the vehicle. By not providing details about how vehicles are appraised, these appraisal companies are potentially misleading consumers by convincing them that they can save RST on the registration of a used motor vehicle simply by having the vehicle “appraised”.

All advertisements reviewed reference the MOF use of the average wholesale value to calculate RST on used motor vehicle transfers. Statements made by appraisal companies, including “pay tax on the actual value and not the Ministry value” tend to infer that the value provided by the ministry is overstated and therefore unfair.

Based on sections 26 - 28 of the *Motor Vehicle Dealers Act* regarding false information, it would be difficult to prove that these advertisements provide false information that would mislead and cause harm to the public. While the advertisements may be seen as somewhat misleading, and lack full disclosure, by stating that appraisals can be obtained to reduce taxes without indicating that the vehicle must be in poor condition, it may be difficult to prove, in a court of law, that the advertisements are in fact misleading.

4.4 Appraisal Process

To determine how to receive a vehicle appraisal, I completed an application for an online appraisal with one of the above-noted appraisal companies for my personal vehicle - a 2013 Subaru Outback with 138,000 km, using real and known vehicle issues. The purpose of trying to

obtain the vehicle appraisal was to determine the level of due diligence the appraiser performs before assigning an “appraised” value to the vehicle.

The first step consisted of documenting information about the vehicle including make, model, year and odometer reading. Next, the appraisal application asked about any mechanical and interior/exterior cosmetic issues that may affect the vehicle value. Problems stated for the vehicle included “trouble with the engine turning over, issues with the alternator, slow change in transmission, issues with breaks and rotors, bald tires, electrical issues with the power winders and rust and cracked paint.” Finally, the appraiser inquired about the history of the vehicle, including if it has ever been in an accident, whether it was a rental or commercial vehicle, whether it came from out of province or country and the purchase price of the vehicle. To determine the purchase price, I looked up the average value for a 2013 Subaru Outback with similar kilometers on Autotrader. The average price for a vehicle in similar condition was around \$14,500.

Approximately 30 minutes after submitting the application for the appraisal, the owner of the company gave me a call to discuss the appraisal application submitted. The appraiser explained to me the process of how the MOF calculates tax on the vehicle using the higher of the purchase price or the book value and by obtaining an appraisal means the tax would be calculated on the higher of the appraisal and the purchase price.

The owner then looked up and informed me that the Redbook value of a 2013 Subaru Outback was approximately \$7,000. We discussed the issues that were documented on the application such as the engine and transmission issues, but at no point was I asked to provide photos or

videos of the vehicle. This is an issue for the MOF, since it is possible that individuals obtaining appraisals are having the appraisals performed by licensed individuals who do not review the true condition of the vehicle. This creates the opportunity for an individual with a gently used vehicle in good condition to receive an appraisal value significantly lower than the true “market value”.

4.5 Licensed Appraisers

Through an open-source web-based search, it was discovered that there is no published list of Vehicle Appraisers in the Province of Ontario. For individuals who are looking to obtain an appraisal for their vehicle, since there is no MOF or OMVIC database of licensed appraisers, they might find themselves turning to appraisers with less desirable reputations.

However, a consumer can call Service Ontario to inquire about local appraisers and a list of local appraisers registered with the Ontario Motor Vehicle Council or the MOF can be provided.

5. Point of Registration Procedures

When a used vehicle is purchased privately, the registration and payment of applicable fees is performed at Service Ontario, a government business that provides the citizens of the province with a way to register for various government licenses including their driver's license, license plate stickers and health cards³¹.

To register a newly purchased used vehicle with Service Ontario, the buyer must obtain a used vehicle information package (UVIP), which contains details about the car such as the make, model, vehicle registration history in Ontario, vehicle lien information and the average wholesale value. They will also be required to submit a bill of sale and safety certificate. If the vehicle is excessively damaged or has high mileage an appraisal will also be submitted.³²

Service Ontario Customer Services Representatives (CSRs) register the vehicles and act as the first line of control in determining whether to accept the information and documentation provided regarding the transaction. Ronni Baronian, CSR Manager at Service Ontario was interviewed to help determine the procedures and controls that CSRs perform to avoid the use of fraudulent used vehicle purchase documents.

Ms. Baronian described that when an individual attends Service Ontario to register their vehicle, CSRs look for bills of sale that appear to be unusual or altered. Another red flag CSRs look out for include if the individual buying and registering the vehicle is presenting an appraisal for a vehicle that is under 20 years old and has a significantly lower value than the average

³¹ (Service Ontario, 2022)

³² (Buy or Sell a Used Vehicle in Ontario, 2022)

wholesale price provided on the UVIP. The CSR will also take into consideration the safety certificate that is provided and the details regarding the safety of the vehicle and the length of time between the appraisal and the safety certificate. The difference in time will help determine whether the purchaser or seller had time to make repairs prior to registration or if the appraisal for the vehicle does not accurately reflect the safety of the vehicle.

When asked how documents are referred to MOF Investigations, Ms. Baronian stated that when documents are flagged as potentially fraudulent, the documents are emailed to the MOF or Ministry of Transportation to investigate. The CSRs will also document whether there were any remarks made during the transaction that the ministries should be aware of prior to their investigation. The Service Ontario location that Ms. Baronian works at is currently seeing between 2-3 used vehicle registrations each week that have enough red flags to warrant a referral to the MOF or Ministry of Transportation. They are also aware of different appraisers who are known to provide fraudulent appraisals and whenever there is a registration from one of those known appraisers, the documents are forwarded for investigation.

Regarding suggestions for potential improvements to processes to better detect fraudulent transactions, Ms. Baronian stated that due to the high volume of transactions that are flagged for referral, investigators taking swifter action to resolve the matters would act as a large deterrent. Ms. Baronian also stated that the best practice for detecting potentially fraudulent transactions having the CSRs that perform the transactions remaining vigilant to watch for unusual or altered documents.

6. Comparison of Tax on Used Vehicles to Other Provinces

The sale of specified used vehicles is not specific to Ontario. To better understand how the current tax policy in Ontario compares to other provinces we reviewed the used vehicle tax policies currently in place in other provinces across the country.

6.1 British Columbia

In British Columbia, as documented in the February 22, 2022, budget and effective October 1, 2022, if you purchase a vehicle at a private sale, you will pay Provincial Sales Tax (PST) at the applicable rate based on the higher of the average wholesale value and the reported purchase price³³. Similar to Ontario, if the vehicle is appraised at a lower value than the average wholesale value, the appraisal value is used to calculate the tax. British Columbia was the most recent province to introduce a sales tax on the purchase and registration on used vehicles purchased privately, so analysis of the change in policy will provide insight into what changes they implemented.

Currently and before the change in tax policy is implemented, if a vehicle is purchased privately in the province and registered with the ministry, PST is calculated based on the purchaser's declared purchase price. The change in tax policy "is intended to address tax avoidance arising from the underreporting of the price of motor vehicles from private sales."³⁴ The Estimated increase in tax for the province is projected to be \$15 million in 2022/23 and 2023/24³⁵.

³³ (British Columbia Budget and Fiscal Plan , 2022)

³⁴ (British Columbia Budget and Fiscal Plan , 2022)

³⁵ (British Columbia Budget and Fiscal Plan , 2022)

The applicable tax rate for vehicles purchased privately is 12% for vehicles with a purchase price or fair market value up to \$124,999.99. The tax rates for vehicles with a purchased price or fair market value between \$125,000 and \$149,999.99 and over \$150,000 is 15% and 20%, respectively.³⁶

This is starkly different from the tax rates imposed on vehicles purchased from GST registrants, imported into Canada, or leased. The rates for vehicles purchased from GST registrants, imported into Canada, or leased are 7% for vehicles less than \$55,000, 8% for vehicles between \$55,000 - 55,999.99, 9% for vehicles between \$56,000 - \$56,999.99, 10% for vehicles between \$57,000 – 149,999.99. The rates for vehicles above \$125,000 are the same as the rates for privately sold used vehicles. Unlike this method used in British Columbia, Ontario does not use tiered tax rates that increase with the value of the vehicles.

For vehicles purchased outside of British Columbia and brought into British Columbia, the vehicle registrant must pay PST on the depreciated purchase price of the vehicle as at the date of entry of the vehicle into the province. The depreciated purchase price is calculated as the greater of:

- a) the depreciated value; and
- b) 50% of the purchase price.

The depreciated value is calculated as:

$$\text{Depreciated value} = \text{Purchase price} - (\text{purchase price} \times \text{depreciation rate})$$

³⁶ (British Columbia Provincial Sales Tax Bulletin, 2022)

The depreciation rate for a vehicle is 30% for each full year the vehicle was in use after purchase plus 2.5% per 30-day period for partial years.³⁷

The changes to the tax policy for purchases of used vehicles from private sales in British Columbia is similar to that in Ontario. However, the implementation of the calculation of the “depreciated purchase price” of a vehicle purchased outside of British Columbia and brought into British Columbia is quite different. As stated previously in section 4.1, in Ontario, vehicles purchased out of province and imported into Ontario are taxed based on the declared purchase price - no other values are used.

As there is no information on the policy decisions for both Ontario and British Columbia for the purchase of used vehicles from outside of the province, it can only be speculated as to why the average wholesale value is not used. One reasonable speculation may be that the policy was intended to apply to individuals who lived and purchased a vehicle in another province and subsequently moved to British Columbia shortly after the purchase. This is evident from the example that is provided in the provincial guidance on PST stating, “You purchased a passenger vehicle from a GST registrant in Alberta for \$60,000 and, at the time you brought the vehicle into B.C., the depreciated purchase price of the vehicle was \$40,000.”³⁸

The calculation of PST for vehicles purchased privately within British Columbia and purchased outside of British Columbia will create similar issues to those identified for privately sold used vehicles registered in Ontario. For vehicles purchased within the province, appraisals will be used for vehicles that may be in a condition valued lower than the average wholesale value.

³⁷ (British Columbia Provincial Sales Tax Bulletin, 2022)

³⁸ (British Columbia Provincial Sales Tax Bulletin, 2022)

This will create the opportunity for individuals and appraisers to submit fictitious appraisals, similar to the current situation in Ontario. For vehicles purchased outside of British Columbia, there is now an opportunity for individuals to submit documents that do not accurately reflect the purchase price of the vehicle. British Columbia signals their intent to minimize the risk associated with individuals submitting documents that do not accurately reflect the purchase price by stating “We regularly review information on the transfer of vehicles to determine that PST was paid correctly. If we are of the opinion the documented purchase price or the documented fair market value of a vehicle does not accurately reflect the fair market value of the vehicle, we may contact you or the seller to request information to support the documented purchase price or value. If you are unable to support the purchase price or fair market value claimed, you may be assessed additional PST on the vehicle.”³⁹ This may prove difficult, similar to the situation in Ontario, there is no section in the British Columbia Provincial Sales Tax Act requiring compliance or compelling individuals or corporations outside of the province to provide information to provincial officials.

6.2 Alberta

There are no taxes levied against the registration of privately sold vehicles in Alberta.

6.3 Saskatchewan

Effective April 2018, Provincial Sales Tax of 6% will be applied on used vehicles with a purchase price greater than \$5,000⁴⁰. There is no section in the Saskatchewan Provincial Sales Tax Act that details the calculation of average wholesale value for used vehicles.

³⁹ (British Columbia Provincial Sales Tax Bulletin, 2022)

⁴⁰ (Saskatchewan - New and Used Vehicles, 2022)

This is different from Ontario's calculation of RST which is based on the greater of the average wholesale value and the declared purchase price. By not considering the use of average wholesale vehicle prices for the calculation of tax for used vehicles, there will be a tax loss to the province when the declared sales price is understated by the vehicle purchaser and seller.

6.4 Manitoba

Retail Sales Tax (RST) of 7% is levied against all purchases of new and used vehicles in Manitoba. For passenger vehicles, RST is calculated on the greater of the vehicle's purchase price and its average wholesale price in the Canadian Black Book⁴¹. If the vehicle has severe damage or excessive use at the time of purchase, there is the option to obtain a vehicle appraisal from an authorized appraiser.

Privately sold vehicles that are brought into Manitoba from out of province within Canada are subject to sales tax on their declared selling price. This is different than vehicles brought into Manitoba from the United States of America, which are taxed on the higher of their declared selling price and the average wholesale value.

The used vehicle sales tax policies in Manitoba are similar to the used vehicle sales tax policies currently in place in Ontario.

6.5 Quebec

In Quebec, the purchase of a used road vehicle registered under the *Highway Safety Code* from an individual who is not registered for Quebec Sales Tax (QST) must pay QST to the Société de

⁴¹ (Manitoba Retail Sales Tax - Privately Purchased Vehicles Bulletin, 2021)

l'assurance automobile du Quebec (SAAQ) when the vehicles registration is transferred⁴². The QST is calculated on the higher of the following two amounts:

- a) the estimated value of the vehicle
- b) the sale price of the vehicle.

The estimated value of a used motor vehicle is calculated by subtracting \$500 from the vehicle's average wholesale price (AWP) as listed in the *Guide d'évaluation Hebdo*. The calculation is the same for vehicles purchased out of province.

For used vehicles that have values less than their estimated value, because it is damaged or has been subjected to excessive wear, QST may be calculated on the appraisal value as long as the purchaser, at the time of the transaction, provides the dealer with an evaluation report prepared by an appraiser who holds a certificate of professional qualification as an automobile damage appraiser issued by the Groupement de assureurs automobiles. The report must have been prepared by the appraiser in the normal exercise of his or her profession at a certified appraisal center or an establishment certified by the Groupement des assureurs automobile.⁴³

The appraiser must also keep records of the appraisal report, for audit purposes.

Per the above regulations on the payment of tax on used vehicles, the guidance is similar to that of Ontario paying the greater of the declared purchase price or average wholesale value. However, it is interesting to note that Quebec requires appraisals to be performed by certified professionals receiving their appraisal credentials from a professional organization.

⁴² (Revenue Quebec - The QST, GST/HST and Road Vehicles, 2018)

⁴³ (Revenue Quebec - The QST, GST/HST and Road Vehicles, 2018)

A review of the Groupement des assureurs automobiles (GAA) website on vehicle appraisers contains information regarding the appraisal process. Under the Appraisal Oversight heading, it is stated that the GAA has established standards and procedures that must be respected by all appraisers who hold a qualification certificate issued by the GAA. It also states that GAA quality controllers audit appraisal files before, during and after repairs⁴⁴. Qualified appraisal technicians require several prerequisites before being considered a licensed appraiser including a diploma of vocational studies in automotive body repair and repainting, successful completion of the GAA competency exam and the successful completion of the Automobile Damage Appraisal Training provided by the GAA⁴⁵.

Finally, the GAA website provides a registry of certified appraisers and approved appraisal centers licensed by the GAA⁴⁶.

The private used vehicle tax policies of both Quebec and Ontario are similar in terms of the calculation of tax based on the greater of the declared price and the average wholesale price and in the event of the car being excessively worn, the tax is based on the greater of the declared price and the appraisal value. However, there are differences in the appraisal process.

As discussed in section 4.3, while OMVIC oversees licensed car dealerships in Ontario and the MOF oversees independent appraisers in Ontario, however, there is no single entity providing oversight over vehicle appraisers. This may negatively impact the consistency and competency

⁴⁴ (Appraisal Oversight, 2022)

⁴⁵ (GAA - Framework for the qualification of Automobile Damage Appraisers)

⁴⁶ (GAA - Certified Appraisers Registry, 2022)

of vehicle appraisal performance across the province. There is also no centralized vehicle appraiser registry where consumers can find information regarding certified vehicle appraisers.

6.6 Prince Edward Island

In Prince Edward Island, Retail Sales Tax of 15% is calculated on the greater of:

- a) the declared purchase price; and
- b) the average wholesale value set out in the Canadian Red book or Canadian Sport Vehicle Blue Book.

The purchaser may substitute a written appraisal of the vehicle for the Red Book Value if they feel the Red Book value does not reflect the actual fair value of the vehicle.⁴⁷

The calculation of RST in PEI is identical to the calculation of RST in Ontario and in both provinces motor vehicle dealers authorized to sell vehicles have the authority to perform vehicle appraisals as well as appraisers authorized by the Commissioner in PEI and OMVIC in Ontario.

6.7 Newfoundland and Labrador

Provincial Sales Tax (PST) of 15% in Newfoundland and Labrador is charged on private used vehicle sales and is calculated on the greater:

- a) of the purchase price stated on the bill of sale; or
- b) the average wholesale value price in the Canadian Red Book.

⁴⁷ (Prince Edward Island Government, 2022)

If the vehicle purchase price is below the wholesale value an affidavit is required from the purchaser and seller. Without an affidavit, the PST will be collected on the Red Book Value.⁴⁸

This is an interesting approach that appears to help mitigate the fraudulent use of taxable vehicle values lower than Red Book values, as opposed to requiring vehicle appraisals, where the buyer and seller swear an affidavit regarding the purchase price that is lower than the vehicle's Red Book value. The introduction of the affidavit likely requires both the buyer and seller to swear an oath regarding the details of the vehicle purchase price and a requirement to present evidence substantiating the transfer of funds paid for the vehicle.

The tax policy used to calculate PST on privately purchased used vehicles in Newfoundland and Labrador is the same as the tax policy used to calculate sales tax on privately purchased used vehicles in Ontario.

6.8 New Brunswick

In New Brunswick, Provincial Vehicle Tax (PVT) is charged on the purchase of used vehicles in a private sale. The tax is calculated based on the fair value of the vehicle which is the greater of:

- a) The purchase price detailed on a valid bill of sale; and
- b) The average wholesale value determined through the use of approved trade publications such as the Canadian Red Book

For used vehicles purchased privately out of province, the calculation of PVT remains on the fair value of the vehicle.⁴⁹

⁴⁸ (Newfoundland & Labrador Digital Government Services, 2022)

⁴⁹ (New Brunswick - Provincial Vehicle Tax, 2022)

A Vehicle Purchase Affidavit (VPA) is required for vehicle purchases where the average wholesale value cannot be found in the Canadian Red Book. The VPA is a legal document containing a statement of facts made by the purchaser and sworn before a person authorized by law to administer an oath.⁵⁰

If a vehicle has exceptionally high mileage or is extensively damaged, the purchaser may apply for a refund of a portion of the PVT. To obtain a refund for extensive damage, the individual submitting the application is required to provide a copy of the bill of sale, copy of the receipt proving payment of PVT and reliable documentation pertaining to the damage sustained by the vehicle, which may include a copy of a recent Motor Vehicle Inspection report, copy of recent repair invoice or service estimate from a licensed car dealer or licensed repair facility, photographs showing damage, accident reports and insurance documentation providing details of loss.⁵¹

This method used to reduce tax paid on used vehicle purchases, when the vehicle purchased has signs of “excessive damage or wear and tear” is different from the approach used in Ontario, since the purchaser of the vehicle has to pay PVT upfront and then applies for a partial PVT refund using the required documentation. Because the refund is not provided at the time of registration, this allows government employees time to perform additional due diligence on the vehicle transaction including a comparison of inspection reports to invoices and photographs of the vehicle. By allowing several methods for proving extensive damage, this

⁵⁰ (New Brunswick - Province Vehicle Tax Vehicle Purchase Affidavit)

⁵¹ (New Brunswick - Provincial Vehicle Tax - Refund for Extensively Damaged Vehicles, 2022)

allows government employees considering the partial PVT refund to review numerous relevant documents collectively and not in isolation.

6.9 Nova Scotia

In Nova Scotia 15% Provincial Tax is charged on the private purchase of used vehicles based on the greater of:

- a) the purchase price; or
- b) the vehicle's fair value, where fair value is determined using the Canadian Red Book wholesale listing price.⁵²

If the purchaser feels the fair value is too high, they can seek an independent appraisal by a registered used vehicle appraiser or licensed motor vehicle dealer. These licensed motor vehicle dealers or businesses must be registered with the province as used vehicle appraisers.⁵³

This privately purchased used vehicle sales tax policy is the same as the privately purchased used vehicle sales tax policy in Ontario.

⁵² (Nova Scotia - Registry of Motor Vehicles - Vehicle Transfer, 2022)

⁵³ (Nova Scotia - Registry of Motor Vehicles - Vehicle Transfer, 2022)

7. Effect of Covid on Used Vehicle Prices

A December 2021 Autotrader report indicated that the price of new cars increased year over year 13.5% to \$49,814, while the price of used cars increased year over year 35.9% to \$33,923⁵⁴. The report goes on to state “the long-term impacts of the pandemic continued to manifest in a global shortage of microchips, which put strain on new car inventory. Paired with pent up demand, new and used vehicle pricing reached record highs in Canada.”

This significant increase in used vehicle values creates a new challenge for the MOF since RST on private used vehicle sales taxes is calculated based on the greater of the price paid for the vehicle or the Canadian Red Book value for the vehicle. In an economic environment where vehicle prices have increased at a substantial rate year over year, the Red Book value may not accurately reflect the increase in used vehicle prices.

When the vehicle purchase price is higher than the Red Book value, there is an incentive for the used vehicle purchaser to not report or under report the true purchase price of the vehicle. The MOF then relies on the Red Book Value of the vehicle to calculate sales tax, which is likely lower than the actual purchase price of the vehicle.

For example, a used vehicle that has a value of \$33,923 in 2022 had a value of \$21,744(update) in 2021. If the Canadian Red Book value does not accurately reflect this increase in price and the vehicle is registered using its red book value that is a closer reflection to the 2021 value, there may be a tax loss of \$1,165 $(\$33,923 - 24,962) \times 13\%$ RST). If this loss is multiplied by the

⁵⁴ (AutoTrader, 2021)

number of vehicles potentially sold each month via Kijiji.ca, as documented in section 2, it results in a potential tax loss of \$305,784,540 ($\$1,165 \times 21,873 \times 12$ months).

8. Investigative Forensic Accountants and Retail Sales Tax Evasion

In cases where Tax Evasion related to private used vehicle transfers occur, there is often collusion occurring - between the vehicle purchaser and seller or between the vehicle purchaser and appraiser. Collusion between two parties can be obscured by lies and falsified documents and can be difficult to prove in a court of law. To determine the factual details of the private used vehicle transactions, there is a need for investigative and forensic accountants (IFA's) to use their investigative skills to determine the facts surrounding each used vehicle sales transaction.

While MOF employees investigating these cases do not specifically follow the *Standard Practices for Investigative and Forensic Accounting Engagements*, as these are not private engagements and investigators are not required to have their professional accounting designation, the procedures and practices within the standards can help guide investigations and ensure the investigations are performed at a high standard, in preparation for trial.

To review how the Standard Practices can apply to RST investigations, an interview was conducted with Tim Daley, Investigator, at the Ministry of Finance. Mr. Daley has over 20 years working experience as an auditor, investigator, and forensic accountant with the Ministry of Finance, working on various provincial tax statute investigations including RST.

Section 100. Introduction, Definition & Applicability of IFA Standard Practices

As the foundation of our review of the Standard Practices application to RST investigations, it is important to consider the introduction and definitions within the Standard Practices to demonstrate their application to RST investigations. Immediately, we can draw several

similarities between the investigations performed by the MOF and those defined for IFA's as stated in section 100.

Section 100.08 states that the definition of "investigative and forensic accounting engagements are those that:

- (a) require the application of professional accounting skills, investigative skills, and an investigative mindset
- (b) Involve disputes or anticipated disputes or where there are risks, concerns or allegations of fraud or other illegal or unethical conduct"⁵⁵

To determine whether tax evasion has occurred as part of an RST investigation, Mr. Daley states that evidence regarding the true purchase price of a privately sold used vehicle must be determined. Investigators must obtain appropriate evidence regarding the purchase price of the vehicle, which often requires separate interviews with the vehicle purchaser and the vehicle seller, along with a review of all documents and other evidence received.

Mr. Daley states that the use of an investigative mindset during RST investigations requires the use of best evidence and fact-based approaches to determine the true events of the vehicle sales transaction and that throughout the evidence collection and interview processes he will "assume nothing and verify everything".

Mr. Daley also believes that investigative skills and an investigative mindset are necessary traits of investigators used to help determine the appropriate practices and procedures required to

⁵⁵ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

help uncover the factual truth in an efficient and effective manner. RST investigations often involve illegal and unethical conduct, which is why the MOF authorizes Investigators to pursue these matters.

Section 200. Engagement Acceptance

Section 200 of the handbook relates to the preparation and acceptance of an engagement with clients. In government investigations related to RST, the investigator is not hired, but rather is assigned the investigation.

No engagement letter or disclosure is required during a Retail Sales Tax Act investigation, however, before the engagement begins, it is important for the investigator to determine whether they believe they will be able to obtain the necessary documents and evidence. This will determine whether the investigator will be able to move forward with the investigation.

Mr. Daley outlines that tips regarding potential tax evasion are first reviewed by the Ministry of Finance's Intelligence Assessment Unit (IAU). The IAU filters these tips by date of occurrence and dollar value and reviews the documents and other evidence included as part of the file. When IAU believes there is sufficient grounds for an investigation the file is escalated to the Investigations Unit. Investigators eventually receive the investigation file and perform a secondary review of the information included in the file. Since Investigators often have significant experience with various Ontario tax statutes, the Investigator ultimately determines whether to move forward with the investigation file or request that the investigation file be closed out due to lack of necessary evidence and other information.

While engagement acceptance may not be required, it is still important to determine what evidence and information is readily available and what information must be obtained from other sources. Unlike some provincial statutes, the RSTA does not have a production order clause requiring third parties to produce requested documents upon request by the MOF Investigator. This may limit the scope of the investigation where information regarding the purchase price and condition of the vehicle are not known, and the vehicle purchaser and seller are unwilling to co-operate with the Investigator. The possibility of a scope limitation should be considered early in the planning stages of the investigation to ensure no excess time and resources are wasted by the Investigator.

Section 300. Planning & Scope of Work

Section 300.01 of the Standard practices states that “an IFA engagement should be adequately planned. Each IFA engagement is unique; accordingly, the planning for each engagement should be customized and evolved as the engagement progresses, requiring the repeated application of professional judgement:

- a) identifying the objectives of the engagement
- b) obtaining sufficient understanding of the circumstances of the engagement and the events giving rise to the engagement
- c) obtaining sufficient understanding of the context within which the engagement is to be conducted (for example, any Tribunal process, laws, regulations, contracts or policies relevant to the engagement);
- d) identifying any limitation of scope where access has been denied or information cannot be obtained or provided; and

- e) evaluating the resources necessary to complete the work, and identifying a suitable engagement team”⁵⁶

Mr. Daley indicated that there is no formal planning process for RST investigations. There are various investigation workflow milestones that Investigators need to perform and confirm in the Investigation Unit’s case management system, but there is no formal planning document reviewed and approved by management before investigative procedures commence.

If the MOF does implement a formal planning process, the requirements detailed below in section 300.03 could be used to help shape the planning document:

“When planning the extent of the scope of work for a particular IFA engagement, IFA practitioners should consider:

- a) developing hypotheses, as applicable, for the purpose of addressing the circumstances and context of the engagement
- b) identifying the approach(es), procedures and techniques that will allow the practitioners to meet the engagement objectives within the constraints of time, cost, and availability of information
- c) identifying financial and other information relevant to the engagement, and developing a strategy to acquire such information; and
- d) determining the impact of the nature and timing of any reporting requirements”⁵⁷

⁵⁶ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

⁵⁷ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

As confirmed with Mr. Daley, most of the investigation planning steps detailed above are routinely performed by Investigators on an informal basis throughout the life of the investigation, but the addition of a formal planning process and document, especially for larger and more complex investigations can help aid Investigators by keeping all documents organized and ensuring the scope of the investigation is well documented and maintained.

RST investigators must also be aware of changes to legislation and the threshold of evidence that must be obtained to be successful during prosecution. Section 300.05 states IFA practitioners should assess the need to obtain independent legal advice on specific matters pertaining to an IFA engagement, including the current state of the law and any relevant contractual or legal requirements/precedents specific to the jurisdictions in which they are working. Investigators can discuss these legal matters with Crown counsel prior to and during the investigation to ensure they are aware of any changes to the relevant statute or if the precedent for sufficient evidence required for conviction has changed.

Section 400. Information Collection & Analysis

Section 400 of the standard practices for IFA engagements deals with how IFAs obtain and collect evidence and how to analyze the information received. For MOF investigators dealing with RST investigations, it is the most important step to ensure that evidence obtained can subsequently be presented in court.

Per my discussion with Mr. Daley, common methods that Investigators use to collect evidence and other relevant information include witness interviews, document requests and database

searches. Witness statements are performed under caution to ensure the interview subject is aware of their legal rights and freedoms and that evidence and statements provided during the interview may be used in court. Document requests are presented to individuals or ministries who may have been party to the transaction. As vehicles are registered with Service Ontario and the documents are subsequently sent to the Ministry and Transportation (MTO), documents are often requested from MTO. Finally, database searches are performed to gather information on the vehicle transaction being investigated and the individuals who were party to the transaction. Since interview request letters are sent out as part of witness interview and document request processes, having accurate information regarding the addresses of the individuals involved in the vehicle transaction and vehicle VIN# are important.

Section 400.01 states that “IFA practitioners should use an investigative mindset in the identification, pursuit, analysis, and evaluation of information relevant to each IFA engagement, contemplating that it may be biased, false, unreliable and/or incomplete.”⁵⁸ As Mr. Daley has previously stated, for all information obtained including witness statements and physical documents, he likes to conduct himself in a manner where he assumes nothing and verifies everything, never taking evidence at face value and always attempting to corroborate statements or values with secondary sources. One example of this approach is used when receiving a declared selling price from a vehicle seller. To verify the selling price, bank statements are obtained to confirm the funds received for the vehicle being deposited into the seller’s bank account.

⁵⁸ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

All the above evidence collected via various investigative procedures is subject to disclosure to defense, so retention of all relevant evidence is very important. This is in line with section 400.07, which states “where practical, IFA practitioners should maintain copies of all documents and other materials relevant to their findings and conclusions.”⁵⁹

Finally, as part of evidence collecting and analysis, Section 400.12 states IFA practitioners should review all information received during an IFA engagement and consider its relevance, reliability, reasonableness, completeness, and consistency with other known engagement information. This is performed throughout the investigation, as each new piece of evidence obtained through interviews or document requests is reviewed and compared to all other related evidence and information for corroboration purposes.

Section 500. File Documentation

At the MOF, throughout the duration of RST investigations, evidence is filed and cataloged within an investigation case management system called “X-Fire”, per Investigator Daley. The diligent use of X-fire helps ensure working papers are maintained in an organized manner.

Documents uploaded into X-fire are used to support conclusions and findings and can be easily referenced throughout the investigation.

Per section 500.03 “practitioners need to document matters that, in their professional opinion, are important to support their work and/or were relevant in reaching their findings, opinions

⁵⁹ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

and/or conclusions.”⁶⁰ The use of X-fire at the MOF is used to help keep investigation documents organized in a logical way that can be recalled throughout the investigation by authorized personnel.

Section 600. Reporting

At the conclusion of each RST investigation, if there is sufficient evidence leading the Investigator to believe that charges under the *Retail Sales Tax Act* are warranted, the Investigator will prepare a crown brief file to be reviewed and approved by Crown prosecutors. The crown brief file contains a review of the relevant tax statute, a synopsis of the events that have taken place, a discussion of the evidence supporting the existence of men’s rea, exhibits and witness statements from witnesses that the crown intends to call.

Per section 600.04, “IFA practitioners should present their findings and conclusions in an objective and unbiased manner”⁶¹. Crown brief files prepared by Investigators for RST investigations must be objective and unbiased to ensure the prosecutor can accurately demonstrate the merits of the case to the court and presiding justice of the peace or judge.

Section 700. Expert Testimony

In the context of RST cases, Mr. Daley describes MOF Investigators as “fact witnesses” due to their direct participation in the gathering and evaluating of relevant evidence. Although MOF Investigators are typically not expert witnesses as described in section 700.01, providing expert

⁶⁰ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

⁶¹ (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

testimony, Investigators have a duty to provide objective and unbiased testimony to the court⁶².

Once charges under the Retail Sales Tax Act are laid, the matter is brought before provincial courts where, if the defendant pleads “not guilty”, the Investigator will be required to testify regarding the evidence gathered and submitted to the court.

Although investigators are employed by the province, they must make evidence-based decisions regarding whether to pursue charges in RST investigations. If the judge or justice of the peace believes the Investigator is unfairly biased, the judge or justice of the peace may not accept the evidence submitted by the Investigator.

⁶² (Standard Practices for Investigative and Forensic Accounting Engagements , 2006)

9. Proposed Anti-Avoidance Procedures for Ontario

In the sections detailed above we have identified several issues that have likely contributed significantly to the evasion of RST on private used vehicles sales. These issues include the lack of relevant documentation between the buyer and seller regarding the declared selling price, the role of the vehicle appraiser and the point of registration procedures. Based on the comparison performed regarding the tax policies for various provinces throughout Canada, we can suggest procedures that may help reduce tax evasion on private used vehicle sales in Ontario.

9.1 Documentation between Buyer and Seller

As described in section 4.1, the MOF relies on the declared selling price to calculate RST on private used vehicle sales. As a result, the government incurs a tax loss when the declared price is less than the actual price paid for the vehicle. To minimize the risk of this type of tax loss, policies and procedures need to be in place to help ensure the correct vehicle purchase price is declared.

Under the *Retail Sales Tax Act* in Ontario when a specified vehicle is transferred between immediate family members the vehicle registrant is exempt from paying RST. When a specified vehicle is given to a qualifying family member, both family members are required to complete the form “Sworn Statement for a Family Gift of a Used Vehicle in The Province of Ontario”⁶³. This form also requires the signature of a Commissioner of Oaths or a Commissioner for Taking Affidavits. The use of the affidavit requires the Commissioner of Oaths or the Commissioner for Taking Affidavits to review the documentation provided between the two parties to ensure the

⁶³ (Sworn Statement for a Family Gift of a Used Motor Vehicle in the Province of Ontario, 2014)

individuals are indeed family members, often requiring the individuals to present appropriate photo identification to the Commissioner. The sworn statement also holds both parties liable should there be a false statement as the document states “Every person who knowingly makes a false or deceptive statement herein is guilty of an offence and is liable on conviction to a fine, or term of imprisonment, or both.”⁶⁴

The implementation of a similar requirement for the declared purchase price of privately purchased used vehicles, to be sworn under oath in front a Commissioner, is one possible remedy to help ensure the correct purchase price is declared and therefore the correct amount of RST is levied. There should also be a requirement to produce proof of payment type and amount for payments made via cheque or e-transfer statement, including bank statements. This procedure would be similar to the process used in New Brunswick when the vehicle’s average wholesale value is not available, as discussed in section 4.5 above, where an affidavit regarding the vehicle purchase price must be signed and sworn in front of a Commissioner.

This procedure will not eliminate all tax evasion as two colluding parties could still agree on and declare a fictitiously lower selling price. There would also be the option to avoid paying taxes by paying cash, which would make it more difficult to prove the total price paid for the vehicle.

The implementation of this procedure would also require additional time and effort on the part of the vehicle seller and purchaser, as they would have to attend the office of a Commissioner together.

⁶⁴ (Sworn Statement for a Family Gift of a Used Motor Vehicle in the Province of Ontario, 2014)

9.2 Role of the Appraiser

In section 4.3, several issues were identified surrounding the role of vehicle appraisers relative to the registration of privately purchased used vehicles. Issues identified included the process of performing appraisals, licensing of appraisers and the lack of government oversight surrounding the appraisal process.

Appraisal Process

To ensure appraisals provided to the MOF are reasonable and accurate, there needs to be improvements to the appraisal process. Improvements should include the implementation of standard appraisal guidelines, removing or significantly improving the option for online appraisals and expanding the requirement for appraisal documents outside of the Motor Vehicle Appraisal Record required upon registration with Service Ontario such as the attachment of photos.

There is no record of standard appraisal guidelines in place for the motor vehicles appraisal in Ontario. This may lead to appraisals performed using different standards and ultimately different appraisal valuations for similar vehicles. If standardized appraisal guidelines were introduced, these issues could be mitigated.

The National Association of Automobile Clubs of Canada (NAACC) provides standards for the appraisal of antique, classic and special interest automobile owners. The NAACC states that the “guidelines should provide for uniform consistent appraisals that can be trusted by any insurer,

buyer, or seller in any Canadian Province or state in the USA. Appraisals that conform to the NAACC guidelines will give confidence to any insurer, buyer or seller.”⁶⁵

Among the guidelines are the following rules:

- a) The appraiser should physically inspect each vehicle whenever possible. If the vehicle is not available for inspection, this fact must dually noted in the appraisal
- b) The appraiser doing the evaluation must provide a minimum of 12 photographs. Pictures of all 4 corners, dash, interior front, interior back, engine compartment and both sides and truck area will be a minimum. The appraiser will date and sign or initial each photograph.
- c) All signed photos will be part of the submitted evaluation.

Most importantly stated above, all vehicle appraisals should be physically performed and where the vehicle has not been seen in person, photos of the vehicle should be provided as part of the appraisal process. Similar guidelines for privately purchased used vehicles should be created by the Ministry of Finance.

Licensing of Appraisers

Currently, as discussed in section 4.2, the MOF only accepts appraisals performed by either:

- a licenced motor vehicle dealer that has a registration/dealer number issued by the Ontario Motor Vehicle Industry Council. The registration/dealer number must be recorded on the appraisal form.

⁶⁵ (National Appraisal Guidelines, 2018)

- an independent motor vehicle appraiser that has been issued an appraiser number by the Ministry of Finance. The appraiser number must be recorded on the appraisal form”⁶⁶.

Licensing vehicle appraisers from two separate government bodies may hamper consistency between the two bodies regarding responsibilities and guidance for vehicle appraisers.

One reasonable suggestion is to create one single government body overseeing the licensing and review of automobile appraisers. Similar to the province of Quebec and the GAA, Ontario should pass the responsibility of appraiser oversight onto OMVIC.

To maintain oversight, OMVIC should conduct appraisal audits to ensure appraisals are being conducted in adherence with the guidelines created. For appraisers maintain their compliance, they should be required to retain all documentation related to the appraisal of vehicles for four years.

9.3 Proactive Procedures

In addition to procedures to help mitigate RST evasion, it is also important to determine if there are any policies or procedures that the MOF can introduce that would help deter tax evasion.

Potential solutions include:

- a) publishing and distributing educational materials directed at individuals buying and selling used vehicles, detailing the common indicators of tax evasion and the potential consequences of committing tax evasion; and

⁶⁶ (Specified Used Vehicles , 2022)

b) publishing statistics related to RST charges and convictions related to privately sold used vehicles.

Educational Material

In April of 2019, The government of New Brunswick published a Tax Interpretation Bulletin outlining the basics of provincial vehicle tax evasion⁶⁷. The Report answers questions such as “What is Tax Evasion?”, “Will I get caught?”, “How can I help Prevent Tax Evasion?” and states the consequences of tax evasion.

This purpose of this bulletin is to educate the public on the indicators of tax evasion to be aware of when purchasing and selling a used vehicle. By detailing the process used to perform examinations and audits of documents received during the used vehicle registration process, the government is advising the general public that the government is performing their own due diligence surrounding the used vehicle registration documents submitted and if an individual registers a vehicle using false or misleading information, a further examination or audit of the documents may follow. This bulletin also provides the general public with information pertaining to the prevention of tax evasion, including the need to provide an accurate bill of sale, keep good records of the vehicle transfer transaction and reporting of suspicious transactions to the government.

Currently, there is no evidence indicating that the MOF has made available any publications to the public about RST fraud related to privately sold used vehicles or how to recognize and avoid this type of fraud. However, on the Motor Vehicle Appraisal Record, the bottom of the

⁶⁷ (New Brunswick -Tax Interpretation Bulletin - Provincial Vehicle Tax - Tax Evasion, 2019)

document states “Every person who knowingly makes a false or deceptive statement herein is guilty of an offence and is liable on conviction to a fine, or term of imprisonment, or both (Retail Sales Tax Act, Subsections 32(4) and 32(4.1))”⁶⁸.

The Ontario MOF should take steps to implement a tax bulletin related to the potential of fraud associated with the private sale of used vehicles, similar to the tax bulletin produced by the province of New Brunswick. The Ontario tax bulletin should follow the format of the New Brunswick document and contain information on how this tax evasion commonly occurs and how consumers can recognize common indicators of this tax evasion.

Charges and Convictions Dashboard

One measure that the MOF can take towards deterring used private vehicle sales tax evasion is by publishing a dashboard highlighting court convictions, fines levied and court plea agreements. Publishing these details on the public-facing MOF website dedicated to registering used vehicles may demonstrate to individuals who are thinking about submitting false documents that this is a crime that the MOF is aware of, actively investigating and prosecuting, where RSTA charges are warranted.

The OMVIC website has a page dedicated to charges and convictions and states that “Section 27 of **Ontario Regulation 333/08** of the *Motor Vehicle Dealers Act* (MVDA) requires OMVIC to make certain information available to the public including information related to charges (under the MVDA or the Consumer Protection Act) laid by OMVIC Investigators against registrants (dealers and salespeople) and convictions if registered. Additionally, OMVIC is

⁶⁸ (Ontario - Central Forms Repository, 2019)

required to make available information that could assist in protecting the public in relation to persons who trade in motor vehicles without benefit of registration (i.e. Curbsiders - illegal, unlicensed dealers).”⁶⁹

While the MOF does not have a similar section to Section 27 of the MVDA in the *Retail Sales Tax Act*, publishing information about individuals who evade taxes related to used vehicle sales will help protect the public by ensuring the seller of the used vehicle does not have any prior infractions related to used vehicle sales.

9.4 Point of Registration Procedures

As described by Ms. Baronian in section 5, the MOF relies on the CSRs at Service Ontario to refer all used vehicle registrations to investigations that trigger red flags. Although this process works, as noted by the 2-3 registrations a week that are being referred to the MOF, relying on the individual CSRs to catch all the potentially fraudulent documents, who likely deal with hundreds of transactions a day, may not result in the highest rate of detection. Two controls that may increase detection are the automatic flagging of documents and the ongoing training of CSRs.

Automatic Flagging of Documents

To help alleviate the pressure of detection on the CSRs, one control to help decrease the number of fraudulent vehicle registrations that go unnoticed is to implement an automatic red flag for vehicles where the declared or appraisal price fall below the average wholesale price by a certain percentage.

⁶⁹ (OMVIC - Charges and Convictions , 2022)

This automatic flagging and referral would be performed by the software system in place at Service Ontario based on criteria set out by the Ministry of finance.

The registrations that exceed the percentage difference would then be sent automatically to the IAU for further examination before they are sent to investigations. This would ensure that all registrations that exceed the threshold percentage will be reviewed, and the documents will not be left for interpretation by the CSRs.

Regular Training from MOF Investigators

To help aid in detection, CSRs need to be up to date on the most recent tactics that individuals are using to circumvent the full payment of RST. This would involve regular training on trends that MOF investigators have identified occurring. The training would involve showing the CSRs appraisal records and fictitious bills of sale that have been submitted and identifying where on the documents they should look out for incorrect information.

MOF investigators should play a large role in providing this educational material, as they are the ones who review and ultimately make the decision on whether the documents are fictitious or not. They are also aware of whether certain appraisers have provided more of these fictitious appraisals than others and to be on the look out for those appraisers.

10. Conclusion

As long that there is tax on the purchase of privately sold used vehicles in Ontario, there will be individuals who are willing to find ways to avoid it. Whether it be through the submission of fictitious bills of sale or appraisal records, there will be pressure on the MOF to improve their policies and controls surrounding RST fraud or be at risk of significant tax loss.

As part of these improvements in policies and controls, the policy makers with the province of Ontario should look to other provinces to determine if the current policies in place will continue to be effective in the current and new environment of escalating used vehicle prices. The MOF should also consider changes to the appraisal process to ensure that third party information coming from appraisers is complete and accurate. Updating point of registration controls with automatic flagging of registrations and keeping CSRs at Service Ontario informed on the latest fraud trends will also enhance early detection of RST evasion. As updates in policies occur, MOF Investigators will continue to play a role in the prosecution of RST evasion techniques related to privately sold used vehicles by gathering evidence of alleged offences using relevant and effective investigative procedures and an investigative mindset.

While these policies and controls may not stop all cases of RST evasion, they can likely further deter tax evaders in the future.

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