

Ministry of Finance
BRIEFING DOCUMENT

To:	Honourable Carole James Minister of Finance and Deputy Premier	Date Requested: April 3, 2019 Date Required: April 5, 2019
Initiated by:	Jordan Goss Assistant Deputy Minister Revenue Division	Date Prepared: April 5, 2019
Ministry Contact:	Michelle Lee Executive Director, Consumer Taxation Programs	Phone Number: 778 698-9609 Email: Michelle.Lee@gov.bc.ca Cliff #: 380715 (X-ref. 379074)

TITLE: PST Refunds on Vehicles Exported from BC

PURPOSE:

(X) FOR INFORMATION

COMMENTS:

High-end vehicles are being purchased by individuals and resold to vehicle dealers and other businesses for the purpose of exporting the vehicles. The Ministry of Finance processes provincial sales tax (PST) refund claims from the individuals. Information about this practice was provided to Dr. Peter German in relation to his work on money laundering.

While the large volumes of PST refund claims for PST paid on luxury vehicles purchased, resold and exported has resulted in a significant workload for the ministry in the past five years, these refund claims have not included specific evidence of criminal activity.

DATE PREPARED: April 5, 2019

TITLE: PST Refunds on Vehicles Exported from BC

ISSUE: Refund of PST Paid on Vehicles Exported from BC.

BACKGROUND:

Under the *Provincial Sales Tax Act* (PSTA), there are a number of refunds available in respect of vehicles. Two such refunds that are used by purchasers of vehicles that are subsequently sold are outlined below.

Refund Provisions

Motor Vehicle Purchased and Resold Within 7 days

The PSTA allows for a refund where a person has purchased a motor vehicle at a sale in BC and resold it within 7 days after the date on which the motor vehicle was purchased.

Goods Purchased For the Sole Purpose of Resale

The PSTA also provides a refund where tax was paid in a circumstance in which there was no legal obligation to pay the tax, but the purchaser failed to supply an exemption certificate or PST registration number at the time of purchase.

There is no legal obligation to pay PST if the vehicle has been purchased solely for the purpose of resale. However, in order to avoid paying tax at the time of purchase, the purchaser must provide an exemption certificate or a PST registration number. If the exemption certificate or PST registration number is not provided, the purchaser must pay the tax but can receive a refund if they can provide evidence that the vehicle was purchased solely for resale and they made no use of the vehicle for any other purpose.

The ability to claim a refund on a vehicle resold within 7 days and on a vehicle that was purchased solely for the purpose of resale also existed under the *Social Service Tax Act* (SSTA) (the act that imposed the PST prior to the implementation of the harmonized sales tax in 2010).

Prior to 2014, these refund provisions were rarely used to refund tax on vehicles and as such, there was no specific refund code created to track these refunds under the SSTA or during the first year of the reimplemented PST under the PSTA.

However, in 2014, the ministry identified a number of refunds being claimed in respect of high-end vehicles being purchased by individuals and resold to vehicle dealers and other businesses for the purpose of exporting the vehicles. A refund code was then created so these refunds have been tracked since 2014.

It is the understanding of the ministry that manufacturers of high-end vehicles generally prohibit their dealerships from selling new vehicles to unauthorized¹ resellers. Therefore, unauthorized resellers wishing to acquire high-end vehicles for export are paying individuals² to purchase the vehicles from the dealerships and sell them to the reseller. These individuals pay for the vehicle with funds from the reseller (including in the form of cheque or bank draft) so it does not appear to the ministry that the dealerships themselves are concerned about selling vehicles ultimately to an unauthorized reseller. And while the resale and/or export of the vehicle may be contrary to the purchase agreement, it is not generally in contravention of the law

The practice of individuals being paid to purchase high-end vehicles for resale to unauthorized resellers and applying for a refund of the PST grew significantly in 2016 and has remained a primary source of incoming refund claims since then. The breakdown of the number of claims and the total values of the refunds paid are included below.

Number of Motor Vehicle Resale Refund Claims Processed by Calendar Year

<u>Calendar Year</u>	<u># of Claims*</u>	<u>Total \$ Refunded</u>	<u>Net Increase (Decrease) # of Claims</u>
2014	734	\$4,787,722.24	698
2015	752	\$5,105,261.57	18
2016	3,674	\$22,474,707.89	2,922
2017	3,691	\$23,701,757.99	17
2018	4,452	\$28,508,119.22	761
2019 (YTD Feb 19)	216	\$1,965,934	

*number of claims completed under MV Resale classification. Claims processed prior to the development of the MV Resale classification have not been captured in this table (claims not captured are minimal when compared to the number of claims processed in more recent years).

Over 99% of these refund claims are for less than \$50,000 in tax with the median being around \$7,800 or so. Of the few refunds paid that exceed \$50,000, all are for refund applications including multiple vehicles, except for one. As the PST rate on vehicles purchased from a dealership could be 7% - 10%, 15%³ or 20%⁴ depending on the

¹ Not authorized to sell the specific brand of new vehicle.

² In one incident, an advertisement for individuals to do this work was seen and the amount being offered to individuals was \$1100.

³ As of April 1, 2018.

⁴ As of April 1, 2018.

purchase price of the vehicle, it is not possible to determine the purchase price of the vehicles being purchased from the refund amounts paid.

Examples of the commonly seen types of vehicles being resold for export include, Mercedes-Benz, Land Rover, Range Rover, BMW, Audi, Porsche, Ford F150, Toyota Sienna, Maserati and Lamborghini. The most popular being Mercedes-Benz, Land Rover and Range Rover.

In processing these refunds over the past 5 years, a number of observations have been made. Resellers are regularly undertaking the practice of using individuals to purchase vehicles for the ultimate purpose of exporting them. As a result, the names of the same resellers are showing up on multiple transactions. Because the resellers are providing the funds to pay for the vehicle, including the PST, the address to which the PST refund cheques are being sent is often that of the reseller even though the cheques themselves are made out in the name of the individual purchasers. From a PST refund perspective, neither of these observations are problematic or off-side of the criteria for receiving refunds.

In applying for refunds, the individuals often struggle with the required documentation necessary to provide evidence that the criteria for the refund. As there are many repeat resellers involved in these transactions, they are now helping the individuals complete the refund applications and provide the necessary documentation, reducing the inconsistencies significantly. However, the ministry has identified some cases where the vehicle transfer form appears to have been altered (e.g., the date of transfer changed to be within the 7 days required for a refund). The ministry does follow up with the refund applicant in these cases and depending on the findings may deny the refund claim.

In cases where the refund application includes documentation on the export of the vehicle, it has been observed that the documentation is somewhat generic. However, the test for paying a refund does not generally require the ministry to be satisfied that the vehicle was exported so the export documentation is not reviewed in detail. That said, it is not believed that the vehicles have remained in the province. The vehicles are being purchased at the retail selling price so there is no real potential for profit if the vehicles are resold into the Canadian market.

As the individuals purchasing the vehicles are being paid to do so and income tax is payable on these amounts, names and addresses of the purchasers and amounts of the refunds these purchasers was shared with the Income Taxation Branch. In addition, where information on the vehicle reseller is known, this is also shared with the Income Taxation Branch. Nothing further has been done with this information yet.

Information Shared with Dr. Peter German

In December 2018, as part of the Income Taxation Branch's (ITB's) regular Joint Compliance Initiative (JCI) meetings, they met with the Investigations Units of CRA and

the Ministry of Finance, the Office of the Superintendent of Real Estate (OSRE), BC Gaming Policy Enforcement, and Property Taxation Branch. s.13,s.16

s.13,s.16

As OSRE was already in contact with Dr. Peter German, OSRE asked ITB if they would speak to Dr. German or his colleagues about the motor vehicle resale refund claims. In January 2019, there was an introductory meeting with Dr. Peter German and representatives of the Ministry of Finance. The meeting was to discuss Dr. Peter German's recent project to investigate money laundering in BC. During this meeting, high level information was shared by the ministry about the approximate number of motor vehicle resale claims processed and paid in recent calendar years, and the increasing volume of applications received which have required the ministry to hire additional resources to manage the inventory of applications received. In addition, the observations identified above were shared. Due to confidentiality provisions of the PSTA, specific information on claimants and the resellers could not be provided.









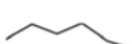
And while there was some discussion of legislative changes that might curtail the practice of unauthorized resellers using individuals to purchase vehicles, changes have not been explored fully with Legal Services Branch or Tax Policy Branch.

Other Types of Transactions

The ministry does see similar practices with electronics and cell phones where individual purchasers are buying them for resale (to unauthorized resellers) and claiming refunds. In part, it is understood that this practice is also a result of manufacturers or dealerships prohibiting sales to unauthorized resellers. The profit margins are not as large as on vehicles but it is a similar practice.

Rank	Exporter	Amount of Taxes Refunded	# Vehicles of Refunded	% of Volume	Refund Frequency by Calendar Year						
					2013	2014	2015	2016	2017	2018	2019
1	s.21	\$ 955,036.34	159	2%	0	0	22	94	32	9	2
2		\$ 1,172,479.24	135	2%	0	18	4	41	45	25	2
3		\$ 912,252.98	209	3%	0	0	0	153	56	0	0
4		\$ 2,358,743.32	350	5%	0	0	3	90	129	128	0
5		\$ 1,422,757.25	203	3%	0	35	65	68	4	31	0
6		\$ 1,418,640.09	305	4%	0	0	0	72	105	126	2
7		\$ 635,934.11	162	2%	0	0	12	64	40	43	3
8		\$ 1,430,296.00	191	3%	0	0	0	53	102	36	0
9		\$ 1,613,939.70	177	2%	22	51	31	53	18	2	0
10		\$ 1,162,143.85	149	2%	0	0	22	47	44	36	0
11		\$ 1,655,342.64	207	3%	0	27	48	88	31	13	0
12		\$ 1,505,851.56	226	3%	0	9	48	103	33	33	0
13		\$ 3,222,114.16	376	5%	0	6	49	165	112	44	0
14		\$ 1,278,517.94	239	3%	0	66	51	15	68	39	0
15		\$ 944,462.14	173	2%	0	20	26	46	70	11	0
16		\$ 2,455,411.64	269	4%	0	0	18	79	101	69	2
17		\$ 3,178,973.65	407	6%	0	0	2	133	145	124	3
18		\$ 500,496.19	158	2%	0	0	0	7	43	92	16
19		\$ 1,568,361.45	266	4%	0	0	0	3	36	225	2
20		\$ 5,727,354.49	834	11%	13	67	132	442	109	71	0
21		\$ 5,909,045.91	776	11%	0	67	92	218	215	162	22
22		\$ 2,558,604.26	387	5%	0	13	94	168	72	39	1
23		\$ 2,208,236.76	281	4%	22	130	54	63	10	2	0
24		\$ 3,699,249.72	519	7%	0	0	71	159	149	140	0
25		\$ 1,507,092.59	166	2%	0	0	4	54	72	34	2
Grand Total		\$ 51,001,337.98	7,324	100%	57	509	848	2,478	1,841	1,534	57

Core Statistics to do with Refunds							FTE	No of	Measures to Processing the Refunds														Straw buyers Projections					
YEAR	Count	Requested Amount	Approved Amount	Recovery Amount	Interest Cat 1	Interest Cat 2	\$	TL's	Days to Complete (Non-Hold)	% Change	Days to Complete (Total)	% Change	Days In Inventory	% Change	Days In Verification	% Change	Days In Waiting For Info	% Change	Days in Pending Approval	% Change	Re-Verifications	% Change	\$ 1,000	\$ 2,000	\$ 3,000	\$ 4,000	\$ 5,000	\$ 10,000
2018	3,653	\$ 25,388,604	\$ 23,361,938	\$ 2,034,992	\$ -	\$ 7,030	7	2	179,996	-15%	188,589	-15%	167,930	-16%	10,271	4%	8,593	-15%	1,828	15%	375	-4%	3,653,000	7,306,000	10,959,000	14,612,000	18,265,000	36,530,000
2017	4,257	\$ 30,045,999	\$ 27,355,233	\$ 2,697,585	\$ 20	\$ 9,571		2	211,741	311%	221,845	110%	200,299	314%	9,863	242%	10,104	-81%	1,621	425%	391	201%	4,257,000	8,514,000	12,771,000	17,028,000	21,285,000	42,570,000
2016	3,635	\$ 23,674,450	\$ 22,195,678	\$ 1,481,261	\$ -	\$ 3,544		2	51,512	664%	105,703	131%	48,438	979%	2,881	53%	54,191	39%	309	-24%	130	155%	3,635,000	7,270,000	10,905,000	14,540,000	18,175,000	36,350,000
2015	1,009	\$ 7,900,808	\$ 6,798,763	\$ 1,106,817	\$ 3	\$ 1,593		1	6,745	121%	45,671	84%	4,489	130%	1,881	129%	38,926	78%	404	-37%	51	-30%	1,009,000	2,018,000	3,027,000	4,036,000	5,045,000	10,090,000
2014	728	\$ 6,371,861	\$ 4,743,303	\$ 1,629,598	\$ -	\$ 372		1	3,053	875%	24,872	1760%	1,950	1002%	822	1226%	21,819	2031%	646	669%	73	711%	728,000	1,456,000	2,184,000	2,912,000	3,640,000	7,280,000
2013	55	\$ 511,515	\$ 430,576	\$ 80,939	\$ 2	\$ -	3	1	313		1,337		177		62		1,024		84		9		55,000	110,000	165,000	220,000	275,000	550,000

s.21					
			159	2.2%	Trend
2015			22	14%	
2016			94	59%	
2017			32	20%	
2018			9	6%	
2019			2	1%	
s.21			135	1.8%	
2014			18	13%	
2015			4	3%	
2016			41	30%	
2017			45	33%	
2018			25	19%	
2019			2	1%	
s.21			209	2.9%	
2016			153	73%	
2017			56	27%	
s.21			350	4.8%	
2015			3	1%	
2016			90	26%	
2017			129	37%	
2018			128	37%	
s.21			203	2.8%	
2014			35	17%	
2015			65	32%	
2016			68	33%	
2017			4	2%	
2018			31	15%	
s.21			305	4.2%	
2016			72	24%	
2017			105	34%	
2018			126	41%	
2019			2	1%	
s.21			162	2.2%	
2015			12	7%	
2016			64	40%	
2017			40	25%	
2018			43	27%	
2019			3	2%	
s.21			191	2.6%	
2016			53	28%	
2017			102	53%	
2018			36	19%	
s.21			177	2.4%	
2013			22	12%	
2014			51	29%	
2015			31	18%	

2016	53	30%	
2017	18	10%	
2018	2	1%	
s.21	149	2.0%	
2015	22	15%	
2016	47	32%	
2017	44	30%	
2018	36	24%	
s.21	207	2.8%	
2014	27	13%	
2015	48	23%	
2016	88	43%	
2017	31	15%	
2018	13	6%	
s.21	226	3.1%	
2014	9	4%	
2015	48	21%	
2016	103	46%	
2017	33	15%	
2018	33	15%	
s.21	376	5.1%	
2014	6	2%	
2015	49	13%	
2016	165	44%	
2017	112	30%	
2018	44	12%	
s.21	239	3.3%	
2014	66	28%	
2015	51	21%	
2016	15	6%	
2017	68	28%	
2018	39	16%	
s.21	173	2.4%	
2014	20	12%	
2015	26	15%	
2016	46	27%	
2017	70	40%	
2018	11	6%	
s.21	269	3.7%	
2015	18	7%	
2016	79	29%	
2017	101	38%	
2018	69	26%	
2019	2	1%	
s.21	407	5.6%	
2015	2	0%	

2016	133	33%	
2017	145	36%	
2018	124	30%	
2019	3	1%	
s.21	158	2.2%	
2016	7	4%	
2017	43	27%	
2018	92	58%	
2019	16	10%	
s.21	266	3.6%	
2016	3	1%	
2017	36	14%	
2018	225	85%	
2019	2	1%	
s.21	834	11.4%	
2013	13	2%	
2014	67	8%	
2015	132	16%	
2016	442	53%	
2017	109	13%	
2018	71	9%	
s.21	776	10.6%	
2014	67	9%	
2015	92	12%	
2016	218	28%	
2017	215	28%	
2018	162	21%	
2019	22	3%	
s.21	387	5.3%	
2014	13	3%	
2015	94	24%	
2016	168	43%	
2017	72	19%	
2018	39	10%	
2019	1	0%	
s.21	281	3.8%	
2013	22	8%	
2014	130	46%	
2015	54	19%	
2016	63	22%	
2017	10	4%	
2018	2	1%	
s.21	519	7.1%	
2015	71	14%	
2016	159	31%	
2017	149	29%	

2018	140	27%
s.21	166	2.3%
2015	4	2%
2016	54	33%
2017	72	43%
2018	34	20%
2019	2	1%
Grand Total	7324	100.0%

Ministry of Finance
BRIEFING DOCUMENT

To: Lori Wanamaker
Deputy Minister

Date Requested: February 20, 2019
Date Required: February 20, 2019

Initiated by: Jordan Goss

Date Prepared: February 20, 2019

Ministry
Contact: Kevin Harrison

Phone Number: 778-698-9570
Email: Kevin.Harrison@gov.bc.ca

Cliff #:

TITLE: PST Refunds to Straw Buyers for Vehicles Exported from BC

PURPOSE:

(X) FOR INFORMATION

COMMENTS:

Executive Director approval: _____

ADM approval: _____

DATE PREPARED: February 20, 2019

TITLE: PST Refunds to Straw Buyers for Vehicles Exported from BC

ISSUE: Increasing Volume of Straw Buyer Refund Applications Received

BACKGROUND:

The Refund Section of the Consumer Taxation Programs Branch (CTPB) has been receiving and processing an increasing number of Provincial Sales Tax (PST) refund applications for luxury vehicles that are purchased by a person (a straw buyer) on behalf of another person who then exports the vehicles outside Canada. There are two refunds available for these types of purchases: vehicles purchased and resold within 7 days, and vehicles purchased with the intent for resale.

DISCUSSION:

Refund Provisions

Purchased and Resold Within 7 days

Most of the straw buyer refund applications received are for vehicles that have been purchased and resold within 7 days. Section 124 of the *Provincial Sales Tax Exemption and Refund Regulation, Resold motor vehicles*, allows for a refund where a person has purchased a motor vehicle at a sale in BC and within 7 days after the date on which the motor vehicle was purchased or the date on which the person took possession of the motor vehicle, whichever is later, the motor vehicle was sold to another person. The *Application for Refund of Provincial Sales Tax Paid on a Motor Vehicle* (FIN 355/MV) includes this as a specific refund reason type and outlines the required supporting documentation to claim this refund.

Purchased with the Intent for Resale

For cases where the vehicle was not resold within 7 days, a refund applicant may be eligible under Section 153, *Refund if person fails to provide evidence at time of sale or lease* of the *Provincial Sales Tax Act*. To qualify for a refund under this provision the director must be satisfied that tax was paid in which there was no legal obligation to pay the tax, but the purchaser failed to supply an exemption certificate or PST number at the time of purchase, and that the purchaser has not been paid a refund or allowed a credit by the collector.

There is no legal obligation to pay PST if the vehicle has been purchased solely for the purpose of resale, however, section 37 of the *Provincial Sales Tax Act* requires a collector to collect PST on tangible personal property being purchased for resale if at or before the time the tax is payable, the purchaser does not provide a PST registration number, or a declaration in a form acceptable to the director (an exemption certificate). The straw buyer will not request the tax exemption from the dealership as they are required to sign a declaration on the Motor Vehicle Purchase Agreement,

which certifies that they are not purchasing the vehicle for export outside of Canada, a requirement of the vehicle manufacturers.

Number of Straw Buyer Refund Claims Processed by Calendar Year

<u>Calendar Year</u>	<u># of Claims*</u>	<u>Total \$ Refunded</u>	<u>Net Increase (Decrease) # of Claims</u>
2014	734	\$4,787,722.24	698
2015	752	\$5,105,261.57	18
2016	3,674	\$22,474,707.89	2,922
2017	3,691	\$23,701,757.99	17
2018	4,452	\$28,508,119.22	761

*number of claims completed under MV Resale classification. Straw buyer claims processed prior to the development of the MV Resale classification have not been captured in this table (claims not captured are minimal when compared to the number of claims processed in more recent years).

Between January 1, 2019 to February 19, 2019 a total of 216 straw buyer refund applications have been processed with refunds issued totaling \$1,965,934.33.

Over 99% of the straw buyer refunds paid are less than \$50,000. Of the few refunds paid that exceed \$50,000, all are for refund applications including multiple vehicles, except for one.

Examples of the commonly seen types of vehicles being exported include, Mercedes-Benz, Land Rover, Range Rover, BMW, Audi, Porsche, Ford F150, Toyota Sienna, Maserati and Lamborghini. The most popular being Mercedes-Benz, Land Rover and Range Rover.

Information Shared with Dr. Peter German

In December 2018, as part of the Income Taxation Branch's (ITB's) regular Joint Compliance Initiative (JCI) meetings, they met with the Investigations Units of CRA, Ministry of Finance, Office of the Superintendent of Real Estate, BC Gaming Policy Enforcement, and Property Taxation Branch. **s.13,s. s.13,s.16**

In January 2019 there was an introductory meeting with Dr. Peter German and representatives of the Ministry of Finance from CTPB and ITB. The meeting was to discuss Dr. Peter German's recent project to investigate money laundering in BC. During this meeting, information was shared from the Refund Section about the approximate number of straw buyer claims processed and paid in recent calendar years, and the increasing volume of applications received which have required the ministry to hire additional resources to manage the inventory of applications received.

Ministry of Finance
BRIEFING DOCUMENT

To: **Date Requested:** April 3, 2019
Date Required: April 5, 2019

Initiated by: Jordan Goss Assistant Deputy Minister Revenue Division	Date Prepared: April 5, 2019
Ministry Contact: Michelle Lee Executive Director, Consumer Taxation Programs	Phone Number: Email: Cliff #: X- reference 379074

TITLE: PST Refunds on Vehicles Exported from BC

PURPOSE:

(X) FOR INFORMATION

COMMENTS:

Although vehicle manufacturers may not allow their vehicles to be purchased for resale or export, the purchase, resale and export are not directly in contravention of the law.

While the large volumes of PST refund claims for PST paid on luxury vehicles purchased, resold and exports has resulted in a significant workload for the ministry in the past five years, these refund claims have not included evidence of criminal activity.

There may be income tax implications in cases where the individual being paid to purchase a vehicle for resale and not declaring that payment as income and where business that are earning income in BC by exporting vehicles are not reporting it.

Executive Director approval: _____

ADM approval: _____

DATE PREPARED: February 20, 2019

TITLE: PST Refunds on Vehicles Exported from BC

ISSUE: Refund of PST Paid on Vehicles Exported from BC.

BACKGROUND:

Under the *Provincial Sales Tax Act* (PSTA), there are a number of refunds available in respect of vehicles. Two such refunds that are used by purchasers of vehicles that are subsequently sold are outlined below.

Refund Provisions

Motor Vehicle Purchased and Resold Within 7 days

The PSTA allows for a refund where a person has purchased a motor vehicle at a sale in BC and resold it within 7 days after the date on which the motor vehicle was purchased.

Goods Purchased For the Sole Purpose of Resale

The PSTA also provides a refund where tax was paid in a circumstance in which there was no legal obligation to pay the tax, but the purchaser failed to supply an exemption certificate or PST registration number at the time of purchase.

There is no legal obligation to pay PST if the vehicle has been purchased solely for the purpose of resale. However, in order to avoid paying tax at the time of purchase, the purchaser must provide an exemption certificate or a PST registration number. If the exemption certificate or PST registration number is not provided, the purchaser must pay the tax but can receive a refund if they can provide evidence that the vehicle was purchased solely for resale and they made no use of the vehicle for any other purpose.

The ability to claim a refund on a vehicle resold within 7 days and on a vehicle that was purchased solely for the purpose of resale also existed under the *Social Service Tax Act* (SSTA) (the act that imposed the PST prior to the implementation of the harmonized sales tax in 2010).

Prior to 2014, these refund provisions were rarely used to refund tax on vehicles and as such, there was no specific refund code created to track these refunds under the SSTA or during the first year of the reimplemented PST under the PSTA.

However, in 2014, the ministry identified a number of refunds being claimed in respect of high-end vehicles being purchased by individuals and resold to vehicle dealers and

other businesses for the purpose of exporting the vehicles. A refund code was then created so these refunds have been tracked since 2014.

It is the understanding of the ministry that manufacturers of high-end vehicles generally prohibit their dealerships from selling new vehicles to unauthorized¹ resellers. Therefore, unauthorized resellers wishing to acquire high-end vehicles for export are paying individuals² to purchase the vehicles from the dealerships and sell them to the reseller. These individuals pay for the vehicle with funds from the reseller (including in the form of cheque or bank draft) so it does not appear to the ministry that the dealerships themselves are concerned about selling vehicles ultimately to an unauthorized reseller.

The practice of individuals being paid to purchase high-end vehicles for resale to unauthorized resellers and applying for a refund of the PST grew significantly in 2016 and has remained a primary source of incoming refund claims since then. The breakdown of the number of claims and the total values of the refunds paid are included below.

Number of Motor Vehicle Resale Refund Claims Processed by Calendar Year

<u>Calendar Year</u>	<u># of Claims*</u>	<u>Total \$ Refunded</u>	<u>Net Increase (Decrease) # of Claims</u>
2014	734	\$4,787,722.24	698
2015	752	\$5,105,261.57	18
2016	3,674	\$22,474,707.89	2,922
2017	3,691	\$23,701,757.99	17
2018	4,452	\$28,508,119.22	761
2019 (YTD Feb 19)	216	\$1,965,934	

*number of claims completed under MV Resale classification. Claims processed prior to the development of the MV Resale classification have not been captured in this table (claims not captured are minimal when compared to the number of claims processed in more recent years).

Over 99% of these refund claims are for less than \$50,000 in tax with the median being around \$7,800 or so. Of the few refunds paid that exceed \$50,000, all are for refund applications including multiple vehicles, except for one. As the PST rate on vehicles purchased from a dealership could be 7% - 10%, 15%³ or 20%⁴ depending on the

¹ Not authorized to sell the specific brand of new vehicle.

² In one incident, an advertisement for individuals to do this work was seen and the amount being offered to individuals was \$1100.

³ As of April 1, 2018.

⁴ As of April 1, 2018.

purchase price of the vehicle, it is not possible to determine the purchase price of the vehicles being purchased from the refund amounts paid.

Examples of the commonly seen types of vehicles being resold for export include, Mercedes-Benz, Land Rover, Range Rover, BMW, Audi, Porsche, Ford F150, Toyota Sienna, Maserati and Lamborghini. The most popular being Mercedes-Benz, Land Rover and Range Rover.

In processing these refunds over the past 5 years, a number of observations have been made. Resellers are regularly undertaking the practice of using individuals to purchase vehicles for the ultimate purpose of exporting them. As a result, the names of the same resellers are showing up on multiple transactions. Because the resellers are providing the funds to pay for the vehicle, including the PST, the address to which the PST refund cheques are being sent is often that of the reseller even though the cheques themselves are made out in the name of the individual purchasers. From a PST refund perspective, neither of these observations are problematic or off-side of the criteria for receiving refunds.

In applying for refunds, the individuals often struggle with the required documentation necessary to provide evidence that the criteria for the refund. As there are many repeat resellers involved in these transactions, they are now helping the individuals complete the refund applications and provide the necessary documentation, reducing the inconsistencies significantly. However, the ministry has identified some cases where the vehicle transfer form appears to have been altered (e.g., the date of transfer changed to be within the 7 days required for a refund). The ministry does follow up with the refund applicant in these cases and depending on the findings may deny the refund claim.

In cases where the refund application includes documentation on the export of the vehicle, it has been observed that the documentation is somewhat generic. However, the test for paying a refund does not generally require the ministry to be satisfied that the vehicle was exported so the export documentation is not reviewed in detail. That said, it is not believed that the vehicles have remained in the province. The vehicles are being purchased at the retail selling price so there is no real potential for profit if the vehicles are resold into the Canadian market.

As the individuals purchasing the vehicles are being paid to do so and income tax is payable on these amounts, names and addresses of the purchasers and amounts of the refunds these purchasers was shared with the Income Taxation Branch. In addition, where information on the vehicle reseller is known, this is also shared with the Income Taxation Branch. Nothing further has been done with this information yet.

Information Shared with Dr. Peter German

In December 2018, as part of the Income Taxation Branch's (ITB's) regular Joint Compliance Initiative (JCI) meetings, they met with the Investigations Units of CRA and the Ministry of Finance, the Office of the Superintendent of Real Estate (OSRE), BC Gaming Policy Enforcement, and Property Taxation Branch. s.13,s.16
s.13,s.16

As OSRE was already in contact with Dr. Peter German, OSRE asked ITB if they would speak to Dr. German or his colleagues about the motor vehicle resale refund claims. In January 2019, there was an introductory meeting with Dr. Peter German and representatives of the Ministry of Finance. The meeting was to discuss Dr. Peter German's recent project to investigate money laundering in BC. During this meeting, high level information was shared by the ministry about the approximate number of motor vehicle resale claims processed and paid in recent calendar years, and the increasing volume of applications received which have required the ministry to hire additional resources to manage the inventory of applications received. In addition, the observations identified above were shared. Due to confidentiality provisions of the PSTA, specific information on claimants and the resellers could not be provided.

And while there was some discussion of legislative changes that might curtail the practice of unauthorized resellers using individuals to purchase vehicles, changes have not been explored fully with Legal Services Branch or Tax Policy Branch.

Other Types of Transactions

The ministry does see similar practices with electronics and cell phones where individual purchasers are buying them for resale (to unauthorized resellers) and claiming refunds. In part, it is understood that this practice is also a result of manufacturers or dealerships prohibiting sales to resellers. The profit margins are not as large as on vehicles but it is a similar practice.

Ministry of Finance
BRIEFING DOCUMENT

To: Lori Wanamaker
Deputy Minister

Date Requested:
Date Required:

Initiated by:

Date Prepared: February 20, 2019

**Ministry
Contact:**

Phone Number:
Email:

Cliff #:

TITLE: Provide a short title to indicate subject of the note,
e.g. Appointment of a Chairperson to the Financial Executive Council

PURPOSE:
(X) DECISION REQUIRED

Direction or decision required - signature block at end of BN

**Make sure to delete those which do not pertain to the briefing note you are preparing*

(X) FOR INFORMATION

For information would include policy overview and updated/revised info

COMMENTS: Optional. Two or three sentences which put the issue into context.

Executive Director approval: _____

ADM approval: _____

DATE PREPARED:**TITLE: Strawbuyer Overview****ISSUE: Increasing Volume of Strawbuyer Refund Applications Received****BACKGROUND:**

The Refund section of the Consumer Taxation Programs Branch has been receiving and processing strawbuyer refund applications since the re-introduction of Provincial Sales Tax (PST). The volume of refund application received continues to increase each year. Due to the volume of applications received, the section has had to hire additional resources, including FTEs, auxiliary employees and co-op students, to continue to process strawbuyer and non-strawbuyer refund applications in a timely manner. Even with additional resources, the section is facing delays in its processing times.

Refund ProvisionsPurchased and Resold Within 7 days

Most of the strawbuyer refund applications received are for vehicles that have been purchased and resold within 7 days. Section 124 of the *Provincial Sales Tax Exemption and Refund Regulation* allows for a refund where a person has purchased a motor vehicle at a sale in British Columbia and within 7 days after the date on which the motor vehicle was purchased or the date on which the person took possession of the motor vehicle, whichever is later, the motor vehicle was sold to another person. The *Application for Refund of Provincial Sales Tax Paid on a Motor Vehicle* (FIN 355/MV) includes this as a specific refund reason type and outlines the required supporting documentation to claim this refund.

Purchased with the Intent for Resale

For cases where the vehicle was not resold within 7 days, a refund applicant may be eligible under Section 152 of the *Provincial Sales Tax Act*, which allows a refund where there is no obligation to pay or collect. To qualify for a refund under this provision the director must be satisfied that tax was paid in which there was no legal obligation to pay the tax and that the person has not been paid a refund or allowed a credit by the collector. The basis that the refund applicant is applying for to support that there is no legal obligation to pay the tax is that the vehicle has been purchased with the intent for resale. Section 37 of the *Provincial Sales Tax Act* allows a collector to sell tangible personal property being purchased for resale exempt if at or before the time the tax is payable, the person provides their registration number, or a declaration in a form acceptable to the director from that person. The strawbuyer will not request the tax exemption from the dealership as they are required to sign the declaration on the Motor Vehicle Purchase Agreement, which certifies that they are not purchasing the vehicle for export outside of Canada.

Number of Strawbuyer Refund Claims Processed by Calendar Year

<u>Calendar Year</u>	<u># of Claims*</u>	<u>Total \$ Refunded</u>	<u>Net Increase (Decrease) # of Claims</u>
2014	734	\$4,787,722.24	698
2015	752	\$5,105,261.57	18
2016	3,674	\$22,474,707.89	2,922
2017	3,691	\$23,701,757.99	17
2018	4,452	\$28,508,119.22	761

*number of claims completed under MV Resale classification. Strawbuyer claims processed prior to the development of the MV Resale classification have not been captured in this table (claims not captured are minimal when compared to the number of claims processed in more recent years).

Between January 1, 2019 to February 19, 2019 a total of 216 strawbuyer refund applications have been processed with refunds issued totaling \$1,965,934.33.

Over 99% of the strawbuyer refunds paid are less than \$50,000. Of the few refunds paid that exceed \$50,000, all are for refund applications including multiple vehicles, except for one.

Examples of the commonly seen types of vehicles being exported include, Mercedes-Benz, Land Rover, Range Rover, BMW, Audi, Porsche, Ford F150, Toyota Sienna, Maserati and Lamborghini. The most popular being Mercedes-Benz, Land Rover and Range Rover.

Information Shared with Dr. Peter German

In January 2019 there was an introductory meeting with Dr. Peter German and representatives of the Ministry of Finance from Consumer Taxation Programs Branch and Information Taxation Branch. The meeting was to discuss Dr. Peter German's recent project to investigate money laundering in BC. During this meeting information was shared from the Refund section about the approximate number of strawbuyer claims processed and paid in recent calendar years, and the increasing volume of applications received which have required the ministry to hire additional resources to manage the inventory of applications received.

Related information sources:

1. Provincial Sales Tax Act – Section 152 – Refund if no obligation to pay or collect
2. Provincial Sales Tax Exemption and Refund Regulation – Section 124 – Resold motor vehicle
3. PST Bulletin 308 – PST on Vehicles
4. PST Bulletin 208 – Goods for Resale
5. Application for Refund of Provincial Sales Tax Paid on a Motor Vehicle (FIN 355/MV)

DISCUSSION:

Lori Wanamaker
Deputy Minister

Date

Increase (Decrease)
number of claims
completed

Year	Count	Requested	Dollar amount approved	Interest	Increase (Decrease) number of claims completed
2013	64	\$ 357,969.57	\$ 551,745.73		
2014	734	\$ 6,414,102.58	\$ 4,787,722.24	\$ 213.60	1047%
2015	752	\$ 6,189,267.86	\$ 5,105,261.57	\$ 304.69	2%
2016	3,674	\$ 23,941,886.82	\$ 22,474,707.89	\$ 4,939.77	389%
2017	3,689	\$ 25,733,874.08	\$ 23,700,227.99	\$ 3,873.00	0%
2018	4,452	\$ 31,256,136.87	\$ 28,208,119.22	\$ 12,779.19	21%
Totals	13,365	\$ 93,893,237.78	\$ 84,827,784.64	\$ 22,110.25	

2019 3 \$ 43,430.76

April 2018 MV resale inventory 1112

MVPA different when resubmitted

ICBC reg docs inconsistent

clause on MVPA will not be exported

MV dealers holding back funds pending confirmation veh is still in Canada , who polices this?

Ministry of Finance
BRIEFING DOCUMENT

To: Lori Wanamaker
Deputy Minister

Date Requested: February 20, 2019
Date Required: February 20, 2019

Initiated by: Jordan Goss
Assistant Deputy Minister
Revenue Division

Date Prepared: February 20, 2019

Ministry Contact: Kevin Harrison
Manager, Tobacco Tax
Consumer Taxation Programs

Phone Number: 778-698-9570
Email: Kevin.Harrison@gov.bc.ca

Cliff #: 379074

TITLE: PST Refunds on Vehicles Exported from BC

PURPOSE:

(X) FOR INFORMATION

COMMENTS:

Executive Director approval: _____

ADM approval: _____

DATE PREPARED: February 20, 2019

TITLE: PST Refunds on Vehicles Exported from BC

ISSUE: Refund of PST Paid on Vehicles Exported from BC.

BACKGROUND:

Under the *Provincial Sales Tax Act* (PSTA), there are a number of refunds available in respect of vehicles. Two such refunds that are used by purchasers of vehicles that are subsequently sold are outlined below.

Refund Provisions

Motor Vehicle Purchased and Resold Within 7 days

The PSTA allows for a refund where a person has purchased a motor vehicle at a sale in BC and resold it within 7 days after the date on which the motor vehicle was purchased.

Goods Purchased For the Sole Purpose of Resale

The PSTA also provides a refund where tax was paid in a circumstance in which there was no legal obligation to pay the tax, but the purchaser failed to supply an exemption certificate or PST registration number at the time of purchase.

There is no legal obligation to pay PST if the vehicle has been purchased solely for the purpose of resale. However, in order to avoid paying tax at the time of purchase, the purchaser must provide an exemption certificate or a PST registration number. If the exemption certificate or PST registration number is not provided, the purchaser must pay the tax but can receive a refund if they can provide evidence that the vehicle was purchased solely for resale and they made no use of the vehicle for any other purpose.

The ability to claim a refund on a vehicle resold within 7 days and on a vehicle that was purchased solely for the purpose of resale also existed under the *Social Service Tax Act* (SSTA) (the act that imposed the PST prior to the implementation of the harmonized sales tax in 2010).

Prior to 2014, these refund provisions were rarely used to refund tax on vehicles and as such, there was no specific refund code created to track these refunds under the SSTA or during the first year of the reimplemented PST under the PSTA.

However, in 2014, the ministry identified a number of refunds being claimed in respect of high-end vehicles being purchased by individuals and resold to vehicle dealers and

other businesses for the purpose of exporting the vehicles. A refund code was then created so these refunds have been tracked since 2014.

It is the understanding of the ministry that manufacturers of high-end vehicles generally prohibit their dealerships from selling new vehicles to unauthorized¹ resellers. Therefore, unauthorized resellers wishing to acquire high-end vehicles for export are paying individuals² to purchase the vehicles from the dealerships and sell them to the reseller. These individuals pay for the vehicle with funds from the reseller (including in the form of cheque or bank draft) so it does not appear to the ministry that the dealerships themselves are concerned about selling vehicles ultimately to an unauthorized reseller.

The practice of individuals being paid to purchase high-end vehicles for resale to unauthorized resellers and applying for a refund of the PST grew significantly in 2016 and has remained a primary source of incoming refund claims since then. The breakdown of the number of claims and the total values of the refunds paid are included below.

Number of Motor Vehicle Resale Refund Claims Processed by Calendar Year

<u>Calendar Year</u>	<u># of Claims*</u>	<u>Total \$ Refunded</u>	<u>Net Increase (Decrease) # of Claims</u>
2014	734	\$4,787,722.24	698
2015	752	\$5,105,261.57	18
2016	3,674	\$22,474,707.89	2,922
2017	3,691	\$23,701,757.99	17
2018	4,452	\$28,508,119.22	761
2019 (YTD Feb 19)	216	\$1,965,934	

*number of claims completed under MV Resale classification. Claims processed prior to the development of the MV Resale classification have not been captured in this table (claims not captured are minimal when compared to the number of claims processed in more recent years).

Over 99% of these refund claims are for less than \$50,000 in tax with the median being around \$7,800 or so. Of the few refunds paid that exceed \$50,000, all are for refund applications including multiple vehicles, except for one. As the PST rate on vehicles purchased from a dealership could be 7% - 10%, 15%³ or 20%⁴ depending on the

¹ Not authorized to sell the specific brand of new vehicle.

² In one incident, an advertisement for individuals to do this work was seen and the amount being offered to individuals was \$1100.

³ As of April 1, 2018.

⁴ As of April 1, 2018.

purchase price of the vehicle, it is not possible to determine the purchase price of the vehicles being purchased from the refund amounts paid.

Examples of the commonly seen types of vehicles being resold for export include, Mercedes-Benz, Land Rover, Range Rover, BMW, Audi, Porsche, Ford F150, Toyota Sienna, Maserati and Lamborghini. The most popular being Mercedes-Benz, Land Rover and Range Rover.

As the individuals purchasing the vehicles are being paid to do so and income tax is payable on these amounts, names and addresses of the purchasers and amounts of the refunds these purchasers was shared with the Income Taxation Branch. Nothing further has been done with this information yet.

Information Shared with Dr. Peter German

In December 2018, as part of the Income Taxation Branch's (ITB's) regular Joint Compliance Initiative (JCI) meetings, they met with the Investigations Units of CRA and the Ministry of Finance, the Office of the Superintendent of Real Estate (OSRE), BC Gaming Policy Enforcement, and Property Taxation Branch s.13,s.16
s.13,s.16

As OSRE was already in contact with Dr. Peter German, OSRE asked ITB if they would speak to Dr. German or his colleagues about the motor vehicle resale refund claims. In January 2019, there was an introductory meeting with Dr. Peter German and representatives of the Ministry of Finance. The meeting was to discuss Dr. Peter German's recent project to investigate money laundering in BC. During this meeting, high level information was shared by the ministry about the approximate number of motor vehicle resale claims processed and paid in recent calendar years, and the increasing volume of applications received which have required the ministry to hire additional resources to manage the inventory of applications received. Due to confidentiality provisions of the PSTA, specific information on claimants and the resellers could not be provided.

And while there was some discussion of legislative changes that might curtail the practice of unauthorized resellers using individuals to purchase vehicles, changes have not been explored fully with Legal Services Branch or Tax Policy Branch.

STRAW BUYERS AND PST REFUNDS

This is a summary of the issues involved in providing refunds of Provincial Sales Tax (PST) for “straw buyers” of motor vehicles in BC.^{s.13}

s.13

Definitions

A “straw buyer” is a person who completes a legal purchase of an item of property, which could be real property or Tangible Personal Property (TPP), but does not intend to retain ownership of it. The person who completes the purchase is a “straw person”, because they never intend to use or retain the property in question. “Investopedia” defines the term as follows³:

A straw buyer is a person who makes a purchase on behalf of another person. A straw buyer is used when the real buyer cannot complete the transaction for some reason. It is not necessarily illegal to use a straw buyer. The act is considered illegal where the transaction involves fraud or purchasing goods for someone who is legally barred from making the purchase themselves.

Straw purchases are also illegal if the buyer commits a fraud on the seller. This criminal form of straw purchasing was the subject of the decision in *Royal Bank of Canada v Kaddoura*, in which the Court of Queen’s Bench of Alberta defined the term as “people who participate in schemes to

¹ SBC 2012, c 35.

² BC Reg 97/2013.

³ <https://www.investopedia.com/terms/s/straw-buyer.asp>, retrieved 1 October 2018.

defraud mortgage lenders by agreeing to purchase houses which they have no intention of occupying, and taking out mortgages they have no intention of paying”⁴.

In the case of motor vehicle purchases, the purchase will amount to a criminal offence if the purchaser provides false identification or financial documents to the seller. In *Zhou v Canada (Citizenship and Immigration)*⁵ the Immigration Review Board considered whether Mr Zhou was inadmissible to Canada on the basis of “serious criminality” and “organised criminality” under ss.36(1)(a) and 37(1)(a) of the *Immigration and Refugee Protection Act*⁶ respectively. Zhou’s criminal enterprise was described in paragraph 48 of the decision as follows⁷:

Det-Const. Gregg Bailey said the directors were “calling the shots” and had the “connections” to pull the scheme off.

The facilitators did “all the dirty work” and recruited straw buyers, people who purchased vehicles from dealers by applying for financing with fraudulent identification, including fake work records and T-4 slips, he said.

It’s alleged the straw buyers drove the vehicles – BMWs, Mercedes, Range Rovers, Acuras and others – across the border to ports in New Jersey and Baltimore.

Malbeuf said by the time the banks realized payments were not being made, the cars were long gone, allegedly shipped to Nigeria and Ghana.

And the financial institutions couldn’t track down the buyers because they were fictitious.

Mr Zhou had been convicted of “motor vehicle theft” under s.333.1(1) of the *Criminal Code*⁸ for his part in the scheme. He was found to be inadmissible under both ss.36(1)(a) and 37(1)(a)⁹.

⁴ [2013] ABQB 630 at paragraph 2.

⁵ [2017] CanLII 38893.

⁶ SC 2001, c 27.

⁷ Citing Chris Doucette, “Car Theft Ring Stopped: York Regional Police”, *Toronto Sun*, 13 November 2013. <https://torontosun.com/2013/11/13/car-theft-ring-stopped-york-regional-police/wcm/c6eaffb9-4185-42d5-8a75-84d65fcba400>, retrieved 1 October 2018.

⁸ RSC 1985, c C-46.

Legal Straw Purchases

In Canada, however, a straw purchase will be legal if the purchaser provides truthful details at the time of sale, and tenders a means of payment that will be honoured. Assume that a purchaser P acts for an organisation that intends to ship a recently purchased vehicle to China. If P provides genuine ID, and tenders a bank draft for the sale price of the vehicle, he or she will not commit a criminal offence. At most, P may breach a term of the contract between P and the seller if P then immediately resells the vehicle to the export organisation.

The basic issue is that “despite the recent slowdown in the Chinese car market, luxury vehicles still cost two to three times more there than they do in the United States due to tariffs, taxes and manufacturers’ pricing”¹⁰. That is, if a person buys a high-priced car from a dealership in the USA or Canada, they can make a substantial profit if they ship the car to China for resale, even taking the shipping costs into account. Steve Lynch, writing in a US context, describes the situation as follows¹¹:

It is estimated that around 35,000 vehicles each year become “floaters,” the name given to vehicles loaded onto container ships and moved overseas. Automakers prohibit their dealers from selling vehicles to exporters as they do not want to lose market share and it can even lead to decreased allocations of cars to America from their headquarters ...

Car companies have imposed penalties and policies on their dealers in an effort to stop the tide of floaters, which have done little more than turn the retailers into

⁹ Above n5 at paragraph 155.

¹⁰ Steve Lynch, “Inside Stories From The War Between Automakers And Dealers Over Exports”, *The Truth About Cars*, 12 February 2016. <https://www.thetruthaboutcars.com/2016/02/inside-stories-war-automakers-dealers-exports>, retrieved 1 October 2018.

¹¹ Ibid.

private investigators. Most luxury makers limit the amount [sic] of cars that the dealers can export to 3 to 5 percent of their annual sales. The penalties for exceeding that number range from fines to reduced allocations of vehicles to chargebacks of incentives. Luxury automakers have imposed over \$40M in fines and penalties on their dealers over the past six years.

Most factories require dealers to have all customers sign a “Non-Export” agreement, which in BMW’s case says that if the buyer exports the vehicle within two years of the purchase date, they agree to pay the dealership the sum of \$15,000. Experts have said the document is not worth the paper it is written on, as dealers and manufacturers cannot tell customers what they can and cannot do with their new cars.

Automakers started circulating lists of known auto exporters, which caused the exporters to start hiring “straw buyers” to handle the transactions, often recruited from Craigslist ... When automakers pressed dealers to question cash buyers, one even briefly requiring the retailers to pull a credit application on suspected exporters, the agents started hiring straw men with good credit to lease the vehicle, which they promptly paid off and thus avoided paying sales tax.

PST Issues

The main issue in the BC context is that a straw buyer of a vehicle will usually claim a refund of PST on a vehicle when they sell it on, either to an exporter organisation or to an overseas buyer directly. Assume that A purchases a vehicle with a bank draft provided by B, an exporter. A will pay PST at the time of the purchase, under s.37(1) of the PST Act, as the vehicle is an item of TPP. By definition, the straw buyer will not admit up front that he or she intends to sell the vehicle overseas (or at all).

A then sells the vehicle within seven days. A can claim a refund under one of two provisions of the PSTERR. The first is s.124, which provides as follows:

- (1) If the director is satisfied
 - (a) that a person purchased a motor vehicle at a sale in British Columbia and paid tax under Part 3 of the Act on the purchase, and
 - (b) that, within 7 days after the date on which the motor vehicle was purchased or the date on which the person took possession of the motor vehicle, whichever is later, the motor vehicle was sold to another person,the director must refund to the person referred to in paragraph (a) of this subsection the amount of tax paid referred to in that paragraph.
- (2) If the director is satisfied that a person paid tax under Division 2 of Part 5 of the Act in respect of a related service provided in relation to a motor vehicle referred to in subsection (1) of this section after the first sale referred to in that provision but before the resale referred to in that provision, the director must refund to the person the amount of tax paid.

That is, if a person resells a vehicle within seven days of its purchase, he or she is entitled to a refund of PST without any further supporting evidence. It would appear that the purpose of the predecessor to s.124 (s.3.13(2) of the *Social Security Tax Act Regulations*¹²) was to streamline the refund procedure, and permit buyers to obtain a refund without voluminous supporting evidence, thereby reducing the workload on refund officers¹³.

The other potentially applicable provision is s.158 of the PSTERR, which provides as follows:

- If the director is satisfied that
- (a) a purchaser purchased tangible personal property at a sale in British Columbia for a business use and paid tax under Part 3 on the purchase,
 - (b) the tangible personal property,
 - (i) in the case of tangible personal property provided by way of promotional distribution, was shipped out of British Columbia in bulk to a recipient for the recipient's own use or consumption outside British Columbia, or
 - (ii) in any other case, was shipped out of British Columbia for use outside British Columbia, and

¹² BC Reg 356/2007.

¹³ O:\CTPB\Policy Rulings Services\Policy and Legislation\Re-implementation\Regulation Reviews\Divison 3 - Vehicles\Regulation Review - sec. 3.13 - vehicle refund.docx.

- (c) no use whatsoever was made of the tangible personal property while it was in British Columbia other than to store it in and to ship it out of British Columbia,
the director must refund to the purchaser the tax paid under Part 3 on the purchase.

In the case of a refund under s.158, the purchaser must demonstrate that he or she has shipped the property (in this case the car) outside BC, and “no use whatsoever” was made of it in BC. The term “no use whatsoever” does not appear to have been litigated in Canada, but a literal interpretation of that term would suggest that even if the straw buyer drives the car off the lot, he or she has made “use” of it and would not be eligible for a refund, especially given the very wide definition of “use” in s.1 of the PST Act. The Ministry has taken the view that “incidental” uses of TPP for resale, such as display and demonstration, do not amount to “use” and therefore do not fall within s.158(c) of the PSTERR and is predecessors¹⁴. The Ministry in turn bases this formulation of the decision of the Supreme Court of BC in *Owen and Sons Cash Registers v R*, in which the court stated that “as soon as the taxpayer manifests conduct which is conduct in exercise of any right or power over tangible personal property, which is not incidental to the object of selling, then the tax is payable”¹⁵. Driving the car off a lot, especially having just no doubt stated to the seller that the car is for the buyer’s personal use, may be something more than purely incidental use in that context.

s.13

¹⁴ See for example appeal no SST498483, 5 May 2006.

¹⁵ Unreported, Supreme Court of British Columbia, 6 October 1994.

Direct Taxes

Subsection 92(2) of the *Constitution Act 1867* provides that Provincial legislatures have the exclusive power to make laws in relation to “direct taxation within the Province in order to the raising of a revenue for Provincial purposes”. The term “direct tax” has been defined many times by the courts, most recently in *Shaw Cable Systems v British Columbia*¹⁶, in which the BC Court of Appeal stated as follows:

[95] The distinction between a constitutionally permissible direct tax and a constitutionally impermissible indirect tax by a province is determined by examining legislative intention or expectation of the impugned tax as it may be expressed in the statutory scheme itself and the context in which it operates. This has been described as the “general tendency” of the tax.

[96] The essential feature of direct taxation is that “under it everyone knows how much he really pays”: Mill’s *Principles of Political Economy*, c. 6, as cited in *Atlantic Smoke Shops v Conlon* [1943] 4 DLR 81 (JCPC) at 87. Where the general tendency of a tax is that the person intended to bear the burden of the tax is the one who pays it, the tax will be direct. A retail sales tax, like the PST, has long been recognized as a direct tax that is *intra vires* the provincial legislature to impose: *Cairns Construction*¹⁷ at 624 and 627–628; *Simpsons-Sears (No. 2)*¹⁸ at 162–163; and *Brompton Holdings*¹⁹ at paras 57–59.

[97] In contrast, where the tax exhibits a “clinging” quality to the goods or services being marketed, the general tendency of the tax is that the burden of it will be passed on through the chain of supply to the ultimate purchaser of the goods as an element of the price: *Reference re Quebec Sales Tax* [1994] 2 SCR 715 at 725; *Ontario Home Builders’ Association v York Region Board of Education* [1996] 2 SCR 929 at para 40; and *Nanaimo Immigrant Settlement Society v British Columbia* [2004] BCCA 410 at para 52. Examples of an indirect tax include customs duties and excise taxes. These taxes fall within the classic statement by Rand J in *CPR v A-G for Saskatchewan et al* [1952] 2 SCR 231 at 251–252, of the indicia of an indirect tax:

¹⁶ [2018] BCCA 252.

¹⁷ *Cairns Construction Ltd v Government of Saskatchewan* [1960] SCR 619.

¹⁸ *Minister of Finance of New Brunswick et al v Simpsons-Sears Ltd* [1982] 1 SCR 144.

¹⁹ *Brompton Holdings Ltd v British Columbia* (1995) 16 BCLR (3d) 164 (CA).

If the tax is related or relateable [*sic*], directly or indirectly, to a unit of the commodity or its price, imposed when the commodity is in course of being manufactured or marketed, then the tax tends to cling as a burden to the unit or the transaction presented to the market.

Peter Hogg argues that the reason that Provinces were restricted to direct forms of taxation by the Constitution was to ensure that such taxes were truly intra-Provincial. He writes as follows²⁰:

Why does s.92(2) limit the provinces to direct taxation? The answer is that the limitation is a corollary to the general principle ... that provincial taxing powers (like other provincial legislative powers) are confined to the territory of the province. The leading feature of an indirect tax is, as we have noticed, that it is likely to be passed on by the initial taxpayer through the incorporation of the tax into the price of goods or services provided by the initial taxpayer. What this means is that a tax that is initially levied on a taxpayer within the province could ultimately be borne by a consumer outside the province. If that occurred, the province would be taxing a person to whom it provided no governmental benefits and to whom it was not accountable. This result is avoided if the province is restricted to direct taxation, where the initial taxpayer within the province is also the person who ultimately bears the tax.

It has been argued that taxes on fuel in particular are outside the taxation powers of the Province, because fuel, more or less by definition, is easily transportable and could very well be “used” outside the Province in which it is sold. In *Air Canada v British Columbia*²¹ the applicant argued that BC’s fuel taxes were unconstitutional, or in the alternative could not apply when the fuel concerned would be consumed primarily outside of BC. La Forest J, writing for himself and Lamer and L’Heureux-Dubé JJ, responded as follows²²:

The airlines argued that the tax was a tax on the consumption of gasoline. Since most of that consumption, so far as the airlines were concerned, was in the airspace, which falls outside the province (see *R in right of Manitoba v Air Canada* [1980] 2 SCR 303), the tax was imposed outside the province. I cannot agree with this contention. The Act clearly does not impose a consumption tax. The references in

²⁰ Peter Hogg, *Constitutional Law of Canada* (5th ed), Carswell, 2013 at 31-8 to 31-9.

²¹ [1989] 1 SCR 1161.

²² *Ibid* at 1187.

the definition to consumption or use merely define the taxpayer, ie, a purchaser who buys gasoline for his own use. Since the tax is imposed in the province in respect of the purchase of gasoline, it does not matter where the gasoline is consumed, whether it is in the airspace or in another province.

Could it therefore be argued that a tax on a vehicle sold in BC to a purchaser in BC, whether or not that purchaser intends to resell the vehicle, is valid and therefore no exemption or refund need be given? The alternative argument is that in such a case, the tax would “cling” to the car and not the final consumer, which constitutes an unconstitutional indirect tax on the *CPR v A-G for Saskatchewan*²³ line of reasoning. Furthermore, the car is not, despite possible claims to the contrary to the dealer, for the purchaser’s “own use”.

The Supreme Court of Canada considered this issue again in *Reference re Quebec Sales Tax*²⁴. At issue here was the constitutionality of a revamped Quebec sales tax which closely mirrored the Federal Goods and Services Tax (GST), including a system of input refunds. Gonthier J, writing for a unanimous court, upheld the constitutionality of the tax, and stated as follows²⁵:

As to the concern that a value-added tax might result in taxation of persons outside the province by indirect means, it must be recognized that the collection of the bulk of tax revenues prior to the retail level creates the possibility that a good shipped to another province will carry with it the provincial tax as part of its price. This situation does not arise with the existing sales taxes because they are imposed exclusively at the retail level and not at the wholesale or manufacturing level. Absent provision for a refund in cases where the good is shipped outside the province, the manufacturer or wholesaler would clearly attempt to recoup the tax paid on the particular good from the consumers in the destination province.

The drafters of the proposed Act, however, have avoided this problem. Section 12 identifies “a supply shipped outside Québec” as a zero-rated supply. As a zero-rated supply, no tax is collected from the recipient and the registrant making the supply is

²³ [1952] 2 SCR 231.

²⁴ [1994] 2 SCR 715.

²⁵ Ibid at 732.

eligible for an input tax refund corresponding to the tax initially paid. The refund thus ensures that the proposed tax has no extra-territorial effects.

s.13

The *Quebec Sales Tax* case demonstrates that a tax that would otherwise be extraterritorial in scope can be made “direct” and constitutionally valid by means of an exemption, refund or zero-rating mechanism for goods exported outside the Province, but that judgement nevertheless seems to make clear that such mechanisms are essential so as to avoid taxation of goods that leave the Province.

Exemptions and Refunds

s.13

Cases that have considered whether the administrative provisions of a direct tax converted the tax into an unconstitutional indirect tax include the following:

1. In *Bomberry v Ontario (Minister of Revenue)*²⁶ the Ontario Divisional Court found that a tobacco quota imposed on First Nations Bands was unconstitutional, in that it prevented the Band in question from having the full benefit of the tax exemption to which it was entitled.
2. In *248545 BC Ltd v. British Columbia*²⁷ the BC Supreme Court upheld the validity of s.39.1 of the *Social Services Tax Act*²⁸, which imposed a six-month time limit on claiming particular kinds of refunds under that Act. The plaintiff was particularly

²⁶ 1989 CanLII 4300 (ON SC).

²⁷ 1991 CanLII 1625 (BC SC).

²⁸ SBC 1996, c 431.

concerned with claiming a refund under s.39.1(2), which related to claiming a refund for an amount paid “by mistake of law”.

3. In *Canadian Bar Association v British Columbia (Attorney-General)*²⁹ the BC Supreme Court upheld the constitutionality of amendments applying SSAT to legal services, partly on the basis that a lawyer who remitted SSAT at the time of billing, and then was not paid for their services, could seek a refund under s.39(1) of the SSAT. The six-year limitation period for claiming such refunds was not remarked on.

s.13

²⁹ (1994) 91 BCLR (2d) 207.

s.13

Alan Freckelton

	Fiscal Year	Number of Claims Processed	Approved Amount	Interest Cat 2	Average Days to Process
	2015	768	\$ 4,922,513.01	287.19	30.35
	2016	1,042	\$ 6,940,648.74	4,194.41	49.17
	2017	4,369	\$ 26,988,661.16	1,892.94	26.38
	2018	3,386	\$ 21,815,574.98	8,518.56	59.75
	2019	1,925	\$ 12,833,624.20	7,020.30	74.41
	Total	11,490	\$ 73,501,022.09	21,913.40	48.01
	Current # of Straw Buyer Refund Applications in Inventory	576			

**MINISTRY OF FINANCE
REVENUE DIVISION
ISSUE NOTE**

**ISSUE: REFUNDS OF PST PAID ON MOTOR VEHICLES PURCHASED
FOR EXPORT FROM BC**

ADVICE AND RECOMMENDED RESPONSE:

- Motor vehicle businesses in BC include exporters who obtain motor vehicles in BC for resale outside BC.
- Because dealers in BC are prohibited by vehicle manufacturers from selling more than a specified number of new vehicles for export, the exporters commonly hire buyers to obtain new vehicles as normal purchasers but solely for resale to the exporters.
- Current PST rules allow the buyers to pay PST to the dealers then claim refunds of that PST from the ministry.
- The rules do not allow a refund to be refused on the basis that the PST was paid in relation to a buyer-exporter arrangement that contravenes the dealer's sales contract with the buyer or the dealer's agreement with the manufacturer.
- Buyer refund claims have created a continuing backlog that prevents the ministry from processing all refund claims within the ministry's standard 30-day processing period on average.
- The ministry is reviewing legislation.

**MINISTRY OF FINANCE
REVENUE DIVISION
ISSUE NOTE**

KEY FACTS:

- A buyer who purchases a new motor vehicle in BC **solely for resale** can purchase the vehicle without paying PST if the buyer provides the dealer with the buyer's PST number or an exemption certificate.
- Alternatively, the buyer can pay PST on the vehicle to the dealer then apply to the ministry for a refund of that PST.
- If the buyer resells the vehicle within seven days of the date the buyer purchases the vehicle or the date the buyer takes possession of the vehicle, whichever is later, the buyer can claim a PST refund regardless of how much use the buyer makes of the vehicle before reselling it.
- If the buyer resells the vehicle after the applicable seven-day period, the buyer can claim a PST refund if the buyer can show the ministry that the buyer purchased the vehicle solely for resale and made no use of the vehicle other than use that is incidental to reselling the vehicle, such as delivering it for resale.
-
- During the five fiscal years ending 2014 through 2018, the ministry processed 13,303 buyer refund claims, and the continuing backlog of such claims prevents the ministry from processing other types of refund claims in a timely manner. (The ministry's "Refunds for PST" webpage currently advises that it can take up to four months to receive a refund.)

MINISTRY OF FINANCE
REVENUE DIVISION
ISSUE NOTE

**ISSUE: REFUNDS OF PST PAID ON MOTOR VEHICLES PURCHASED
FOR EXPORT FROM BC**

Question: Why is the ministry providing refunds to buyers who are entering into contracts in bad faith??

Answer: Breach of contract between two private parties is a civil matter. The government is still required by law in this situation to grant a refund.

Question: Why does the legislation provide for a refund where a purchaser resells a vehicle within 7 days of purchase?

Answer: The refund provision allows for refunds where a purchaser changes their mind about a purchase immediately after making the purchase without the penalty of losing a large amount of PST. The provisions also allows for a refund of PST where a lessor buys out their lease and then immediately resells the vehicle where some use has been made of the vehicle.

Date: 2019-04-05
To: Samantha Sherman, Director: Policy, Rulings and Other Services
From: Darren Smith, Policy Analyst
Subject: Suggested amendments relating to motor vehicle buyer-exporter agreements

Arrangements involving a “buyer”¹ who purchases a new motor vehicle for resale to an undisclosed exporter have been used since at least the turn of the century. The three *Social Service Tax Act* (SSTA) folders for SSTA regulation 3.13(2) include one dedicated entirely to such arrangements and their related PST refunds, with correspondence dating to 2002. The arrangements had become so common, the British Columbia Automobile Dealers’ Association wrote the ministry in January 2002 requesting (unsuccessfully) that regulation 3.13 be repealed, in order to help dealers minimize unauthorized motor vehicle exports from BC.

The SSTA folder includes a March 8, 2002 report by “Refunds Section and Policy and Legislation Section” according to which 1,390 buyer refund claims had been processed so far in fiscal year 2002, for a total of \$6,874,980. The following figures reported by Refunds Section² relate to buyer claims under the *Provincial Sales Tax Act* (PSTA).

Fiscal year ending in	Claims	Approved	Refund interest	Interest per claim	Average days to process
2015	768	\$ 4,922,513.01	\$ 287.19	\$ 0.37	30
2016	1,042	6,940,648.74	4,194.41	4.03	49
2017	4,369	26,988,661.16	1,892.94	0.43	26
2018	3,386	21,815,574.98	8,518.56	2.52	60
2019	1,925	12,833,624.20	7,020.30	3.65	74
	<u>11,490</u>	<u>\$ 73,501,022.09</u>	<u>\$ 21,913.40</u>		

In order to manage the extra workload created by buyer claims, Refunds Section has added six fulltime equivalents since April 2015, and it hired temporary staff in fiscal year 2017 (which may explain the decrease in refund interest that year).³ Despite the extra staff, Refunds Section cannot regularly meet its standard claim processing time of 30 days from the date of submission. The ministry’s website currently advises all PST refund claimants that it can take up to four months for their claims to be processed. The general delay is due primarily to the buyer workload.

The PSTA and its regulations can be amended in a way that would help minimize delays in processing refund claims and interest payable by the province on overdue refunds. The amendments would not prevent buyers from excluding PST from their costs of sales. They could still do so, but only by choosing to do so at the point of sale, by providing the dealer with the required documentation. PST a buyer pays on a motor vehicle would be tax the buyer choses to pay.

¹ In this paper, “buyer” means a person who purchases a motor vehicle for resale to an exporter.

² Email from Kari Costello, July 26, 2018, “RE: Straw Buyers Meeting”.

³ Email from Norm Sum, March 15, 2019, “RE: Straw buying FTEs”.

CURRENT OPTIONS FOR EXCLUDING PST FROM THE COST OF A MOTOR VEHICLE PURCHASED FOR RESALE

A buyer who purchases a motor vehicle from a dealer in BC solely for resale can do any of the following to exclude PST from the buyer's cost of the vehicle.⁴

1. Use PSTA 37(3) [*Tax on purchase*] to cause PSTA 37(1) not to apply to the buyer in relation to the vehicle, by giving the buyer's PST number or, if the buyer is not a collector, a FIN 490 exemption certificate to the dealer at or before the time PST becomes payable on the vehicle;
2. Pay an amount as PST on the vehicle and obtain a refund of that amount under PSTA 152(1) [*Refund if no obligation to pay or collect*], if the buyer attempts to use PSTA 37(3) but the buyer collects the amount anyways;
3. Pay PST on the vehicle and obtain a refund of that PST under PSTA 153 [*Refund if person fails to provide evidence at time of sale or lease*], if the buyer does not attempt to use PSTA 37(3);
4. Pay PST on the vehicle and obtain a refund of that PST under PSTERR 124 [*Resold motor vehicle*], if the buyer resells the vehicle within seven days of the date the buyer purchases the vehicle or the date the buyer takes possession of the vehicle, whichever is later.

1. Using PSTA 37(3) to cause PSTA 37(1) not to apply to the buyer in relation to the motor vehicle

If the buyer were to purchase the motor vehicle as a "purchaser"⁵, the buyer would pay PST on the vehicle under PSTA 37(1). In order to purchase the vehicle as a "purchaser", the buyer must obtain the vehicle for "use", which excludes the storing, keeping or retaining of a motor vehicle for the sole purpose of resale.⁶ A buyer who obtains a motor vehicle solely for resale and therefore for something other than "use" does so as someone other than a "purchaser".

Simply alleging to the dealer that the motor vehicle is being purchased solely for resale is not enough to prevent PSTA 37(1) from applying to the buyer. In accordance with PSTA 37(3), if the dealer does not obtain the buyer's PST number or a FIN 490, the dealer must levy and collect PST on the vehicle, and the buyer must pay that PST, under PSTA 37(1) as if the buyer were a "purchaser".

2. Paying an amount as PST on the motor vehicle and obtaining a refund of that amount under PSTA 152(1)

By purchasing the motor vehicle for something other than "use" and providing the dealer with the documentation required under PSTA 37(3), the buyer creates circumstances in which there is no legal obligation for the buyer to pay PST on the vehicle. However, the dealer is not required to apply PSTA 37(3) to any sale and may levy an amount on the vehicle as PST. The amount would not be PST, because under the circumstances PST does not apply. If the director is satisfied that despite creating the circumstances the buyer paid an amount as PST on the vehicle, the director must pay that amount to the buyer, under PSTA 152(1).

⁴ This paper concerns refunds claimed from the ministry. The buyer's option of paying PST, or an amount as PST, and claiming a PST credit or refund from the dealer would be addressed separately.

⁵ Terms in quotation marks that are not defined in this paper are defined under the PSTA.

⁶ Sales of motor vehicles commonly involve use other than storing, keeping and retaining, such as test-driving and delivering. Use of a motor vehicle that is reasonably incidental to selling the motor vehicle is part of storing, keeping or retaining the motor vehicle for resale and therefore something other than "use" of that motor vehicle.

3. Paying PST on the motor vehicle and obtaining a refund of that PST under PSTA 153

If the buyer does not use PSTA 37(3), the dealer must levy and collect PST on the motor vehicle, and the buyer must pay that PST under PSTA 37(1). Because PSTA 37(3) levies “tax”, the amount the buyer pays as PST is PST, not an amount as PST. Having paid the PST in accordance with PSTA 37(3), the buyer can claim a refund under PSTA 153 if the buyer can satisfy the director that the buyer purchased the motor vehicle for something other than “use” and therefore would not have been required to pay the PST had the buyer used PSTA 37(3).

4. Paying PST on the motor vehicle and obtaining a refund of that PST under PSTERR 124

In any case, and regardless of whether the buyer makes “use” of the motor vehicle, if the buyer pays PST on the vehicle and resells the vehicle within seven days of the date the buyer purchases the vehicle or the date the buyer takes possession of the vehicle, whichever is later, the buyer can obtain a refund of the PST under PSTERR 124.

THE CURRENT OPTIONS IN RELATION TO AN UNDISCLOSED BUYER-EXPORTER ARRANGEMENT

If the buyer purchases the motor vehicle under a buyer-exporter arrangement the buyer wishes not to reveal to the dealer, most likely the buyer will exercise option 3 or 4: the buyer will purchase the vehicle as a “purchaser”, pay PST on the vehicle and claim a PST refund from the ministry. Most buyers who purchase motor vehicles under such arrangements exercise option 4, by reselling the vehicles within the seven-day period. For example, of the 3,386 buyer claims processed in fiscal 2018, 2,829 (83.5%) qualified under PSTERR 124. The remaining 557 qualified under PST 153⁷.

In many cases, the buyer takes steps to ensure that the dealer is unaware of the buyer-exporter arrangement. Manufacturers control geographical distribution of their motor vehicles by prohibiting their associated dealers from selling more than a specified number of new motor vehicles to persons who will export them. It is common for a dealer in BC to minimize its risk of exceeding that number by requiring a buyer to certify in writing that the motor vehicle is being purchased for use in BC, and by obtaining a deposit from the buyer repayable after a period of time if the buyer shows that the vehicle is still in BC. Exporters who wish to obtain new motor vehicles from such dealers hire buyers to purchase the vehicles as “purchasers” but solely for resale to the exporters. The buyer typically exercises option 3 or 4, in order not to reveal the arrangement to the dealer.

PROPOSED AMENDMENTS

s.13

⁷ Email from Kari Costello, July 26, 2018, “RE: Straw Buyers Meeting”.

Page 50 to/à Page 51

Withheld pursuant to/removed as

s.13

DECISION:	OPTION 1	OPTION 2	OPTION 3
-----------	----------	----------	----------

DRAFT

Ministry of Finance Revenue Division BRIEFING DOCUMENT

TO: Michelle Dee

DATE REQUESTED: [click here](#)

DATE PREPARED: [click here](#)

REF #: [click here](#)

TITLE: STRAW BUYERS AND PST REFUNDS

PURPOSE: To provide options for dealing with the issue of providing refunds on PST for “straw buyers” of motor vehicles.

COMMENTS:

- [click here](#)
-

ISSUE:

- Providing refunds for straw purchasers of vehicles takes up a disproportionate amount of the work of the refunds section.

s.13

Branch Director _____

s.13

DATE PREPARED: [click here](#)

BACKGROUND:

- This is a summary of the issues involved in providing refunds of Provincial Sales Tax (PST) for “straw buyers” of motor vehicles in BC. ^{s.13}

DISCUSSION:

Definitions

- A “straw buyer” is a person who completes a legal purchase of an item of property, which could be real property or Tangible Personal Property (TPP), but does not intend to retain ownership of it. The person who completes the purchase is a “straw person”, because they never intend to use or retain the property in question. “Investopedia” defines the term as follows³:
A straw buyer is a person who makes a purchase on behalf of another person. A straw buyer is used when the real buyer cannot complete the transaction for some reason. It is not necessarily illegal to use a straw buyer. The act is considered illegal where the transaction involves fraud or purchasing goods for someone who is legally barred from making the purchase themselves.
- Straw purchases are also illegal if the buyer commits a fraud on the seller. This criminal form of straw purchasing was the subject of the decision in *Royal Bank of Canada v Kaddoura*, in which the Court of Queen’s Bench of Alberta defined the term as “people who participate in schemes to defraud mortgage lenders by agreeing to purchase houses which they have no intention of occupying, and taking out mortgages they have no intention of paying”⁴.
- In the case of motor vehicle purchases, the purchase will amount to a criminal offence if the purchaser provides false identification or financial documents to the seller. In *Zhou v*

¹ SBC 2012, c 35.

² BC Reg 97/2013.

³ <https://www.investopedia.com/terms/s/straw-buyer.asp>, retrieved 1 October 2018.

⁴ [2013] ABQB 630 at paragraph 2.

*Canada (Citizenship and Immigration)*⁵ the Immigration Review Board considered whether Mr Zhou was inadmissible to Canada on the basis of “serious criminality” and “organised criminality” under ss.36(1)(a) and 37(1)(a) of the *Immigration and Refugee Protection Act*⁶ respectively. Zhou’s criminal enterprise was described in paragraph 48 of the decision as follows⁷:

Det-Const. Gregg Bailey said the directors were “calling the shots” and had the “connections” to pull the scheme off.

The facilitators did “all the dirty work” and recruited straw buyers, people who purchased vehicles from dealers by applying for financing with fraudulent identification, including fake work records and T-4 slips, he said.

It’s alleged the straw buyers drove the vehicles – BMWs, Mercedes, Range Rovers, Acuras and others – across the border to ports in New Jersey and Baltimore.

Malbeuf said by the time the banks realized payments were not being made, the cars were long gone, allegedly shipped to Nigeria and Ghana. And the financial institutions couldn’t track down the buyers because they were fictitious.

- Mr Zhou had been convicted of “motor vehicle theft” under s.333.1(1) of the *Criminal Code*⁸ for his part in the scheme. He was found to be inadmissible under both ss.36(1)(a) and 37(1)(a)⁹.

Legal Straw Purchases

- In Canada, however, a straw purchase will be legal if the purchaser provides truthful details at the time of sale, and tenders a means of payment that will be honoured. Assume that a purchaser P acts for an organisation that intends to ship a recently purchased vehicle to China. If P provides genuine ID, and tenders a bank draft for the sale price of the vehicle, he or she will not commit a criminal offence. At most, P may breach a term of the contract between P and the seller if P then immediately resells the vehicle to the export organisation. This is obviously a civil matter between P and the seller and of no interest to the Ministry.

⁵ [2017] CanLII 38893.

⁶ SC 2001, c 27.

⁷ Citing Chris Doucette, “Car Theft Ring Stopped: York Regional Police”, *Toronto Sun*, 13 November 2013. <https://torontosun.com/2013/11/13/car-theft-ring-stopped-york-regional-police/wcm/c6eaffb9-4185-42d5-8a75-84d65fcba400>, retrieved 1 October 2018.

⁸ RSC 1985, c C-46.

⁹ Above n5 at paragraph 155.

- The basic issue is that “despite the recent slowdown in the Chinese car market, luxury vehicles still cost two to three times more there than they do in the United States due to tariffs, taxes and manufacturers’ pricing”¹⁰. That is, if a person buys a high-priced car from a dealership in the USA or Canada, they can make a substantial profit if they ship the car to China for resale, even taking the shipping costs into account. Steve Lynch, writing in a US context, describes the situation as follows¹¹:

It is estimated that around 35,000 vehicles each year become “floaters,” the name given to vehicles loaded onto container ships and moved overseas. Automakers prohibit their dealers from selling vehicles to exporters as they do not want to lose market share and it can even lead to decreased allocations of cars to America from their headquarters ...

Car companies have imposed penalties and policies on their dealers in an effort to stop the tide of floaters, which have done little more than turn the retailers into private investigators. Most luxury makers limit the amount [sic] of cars that the dealers can export to 3 to 5 percent of their annual sales. The penalties for exceeding that number range from fines to reduced allocations of vehicles to chargebacks of incentives. Luxury automakers have imposed over \$40M in fines and penalties on their dealers over the past six years.

Most factories require dealers to have all customers sign a “Non-Export” agreement, which in BMW’s case says that if the buyer exports the vehicle within two years of the purchase date, they agree to pay the dealership the sum of \$15,000. Experts have said the document is not worth the paper it is written on, as dealers and manufacturers cannot tell customers what they can and cannot do with their new cars.

Automakers started circulating lists of known auto exporters, which caused the exporters to start hiring “straw buyers” to handle the transactions, often recruited from Craigslist ... When automakers pressed dealers to question cash buyers, one even briefly requiring the retailers to pull a credit application on suspected exporters, the agents started hiring straw men with good credit to lease the vehicle, which they promptly paid off and thus avoided paying sales tax.

¹⁰ Steve Lynch, “Inside Stories From The War Between Automakers And Dealers Over Exports”, *The Truth About Cars*, 12 February 2016. <https://www.thetruthaboutcars.com/2016/02/inside-stories-war-automakers-dealers-exports>, retrieved 1 October 2018.

¹¹ Ibid.

PST Issues

- The main issue in the BC context is that a straw buyer of a vehicle will usually claim a refund of PST on a vehicle when they sell it on, either to an exporter organisation or to an overseas buyer directly. Assume that A purchases a vehicle with a bank draft provided by B, an exporter. A will pay PST at the time of the purchase, under s.37(1) of the PST Act, as the vehicle is an item of TPP. By definition, the straw buyer will not admit up front that he or she intends to sell the vehicle overseas (or at all).
- A then sells the vehicle within seven days. A can claim a refund under one of two provisions of the PSTERR. The first is s.124, which provides as follows:
 - (1) If the director is satisfied
 - (a) that a person purchased a motor vehicle at a sale in British Columbia and paid tax under Part 3 of the Act on the purchase, and
 - (b) that, within 7 days after the date on which the motor vehicle was purchased or the date on which the person took possession of the motor vehicle, whichever is later, the motor vehicle was sold to another person,the director must refund to the person referred to in paragraph (a) of this subsection the amount of tax paid referred to in that paragraph.
 - (2) If the director is satisfied that a person paid tax under Division 2 of Part 5 of the Act in respect of a related service provided in relation to a motor vehicle referred to in subsection (1) of this section after the first sale referred to in that provision but before the resale referred to in that provision, the director must refund to the person the amount of tax paid.
- That is, if a person resells a vehicle within seven days of its purchase, he or she is entitled to a refund of PST without any further supporting evidence. It would appear that the purpose of the predecessor to s.124 (s.3.13(2) of the *Social Security Tax Act Regulations*¹²) was to streamline the refund procedure, and permit buyers to obtain a refund without voluminous supporting evidence, thereby reducing the workload on refund officers¹³.
- The other potentially applicable provision is s.158 of the PSTERR, which provides as follows:

¹² BC Reg 356/2007.

¹³ O:\CTPB\Policy Rulings Services\Policy and Legislation\Re-implementation\Regulation Reviews\Divison 3 - Vehicles\Regulation Review - sec. 3.13 - vehicle refund.docx.

If the director is satisfied that

- (a) a purchaser purchased tangible personal property at a sale in British Columbia for a business use and paid tax under Part 3 on the purchase,
- (b) the tangible personal property,
 - (i) in the case of tangible personal property provided by way of promotional distribution, was shipped out of British Columbia in bulk to a recipient for the recipient's own use or consumption outside British Columbia, or
 - (ii) in any other case, was shipped out of British Columbia for use outside British Columbia, and
- (c) no use whatsoever was made of the tangible personal property while it was in British Columbia other than to store it in and to ship it out of British Columbia,

the director must refund to the purchaser the tax paid under Part 3 on the purchase.

- In the case of a refund under s.158, the purchaser must demonstrate that he or she has shipped the property (in this case the car) outside BC, and “no use whatsoever” was made of it in BC. The term “no use whatsoever” does not appear to have been litigated in Canada, but a literal interpretation of that term would suggest that even if the straw buyer drives the car off the lot, he or she has made “use” of it and would not be eligible for a refund, especially given the very wide definition of “use” in s.1 of the PST Act.
- The Ministry has taken the view that “incidental” uses of TPP for resale, such as display and demonstration, do not amount to “use” and therefore do not fall within s.158(c) of the PSTERR and its predecessors¹⁴. The Ministry in turn bases this formulation of the decision of the Supreme Court of BC in *Owen and Sons Cash Registers v R*, in which the court stated that “as soon as the taxpayer manifests conduct which is conduct in exercise of any right or power over tangible personal property, which is not incidental to the object of selling, then the tax is payable”¹⁵. Driving the car off a lot, especially having just no doubt stated to the seller that the car is for the buyer's personal use, may be something more than purely incidental use in that context.

s.13

¹⁴ See for example appeal no SST498483, 5 May 2006.

¹⁵ Unreported, Supreme Court of British Columbia, 6 October 1994.

Direct Taxes

- Subsection 92(2) of the *Constitution Act 1867* provides that Provincial legislatures have the exclusive power to make laws in relation to “direct taxation within the Province in order to the raising of a revenue for Provincial purposes”. The term “direct tax” has been defined many times by the courts, most recently in *Shaw Cable Systems v British Columbia*¹⁶, in which the BC Court of Appeal stated as follows:

[95] The distinction between a constitutionally permissible direct tax and a constitutionally impermissible indirect tax by a province is determined by examining legislative intention or expectation of the impugned tax as it may be expressed in the statutory scheme itself and the context in which it operates. This has been described as the “general tendency” of the tax.

[96] The essential feature of direct taxation is that “under it everyone knows how much he really pays”: Mill’s *Principles of Political Economy*, c. 6, as cited in *Atlantic Smoke Shops v Conlon* [1943] 4 DLR 81 (JCPC) at 87. Where the general tendency of a tax is that the person intended to bear the burden of the tax is the one who pays it, the tax will be direct. A retail sales tax, like the PST, has long been recognized as a direct tax that is *intra vires* the provincial legislature to impose: *Cairns Construction*¹⁷ at 624 and 627–628; *Simpsons-Sears (No. 2)*¹⁸ at 162–163; and *Brompton Holdings*¹⁹ at paras 57–59.

[97] In contrast, where the tax exhibits a “clinging” quality to the goods or services being marketed, the general tendency of the tax is that the burden of it will be passed on through the chain of supply to the ultimate purchaser of the goods as an element of the price: *Reference re Quebec Sales Tax* [1994] 2 SCR 715 at 725; *Ontario Home Builders’ Association v York Region Board of Education* [1996] 2 SCR 929 at para 40; and *Nanaimo Immigrant Settlement Society v British Columbia* [2004] BCCA 410 at para 52. Examples of an indirect tax include customs duties and excise taxes. These taxes fall within the classic statement by Rand J in *CPR v A-G for Saskatchewan et al* [1952] 2 SCR 231 at 251–252, of the indicia of an indirect tax:

If the tax is related or relateable [*sic*], directly or indirectly, to a unit of the commodity or its price, imposed when the commodity is in course of being manufactured or marketed, then the tax tends to cling as a burden to the unit or the transaction presented to the market.

¹⁶ [2018] BCCA 252.

¹⁷ *Cairns Construction Ltd v Government of Saskatchewan* [1960] SCR 619.

¹⁸ *Minister of Finance of New Brunswick et al v Simpsons-Sears Ltd* [1982] 1 SCR 144.

¹⁹ *Brompton Holdings Ltd v British Columbia* (1995) 16 BCLR (3d) 164 (CA).

- Peter Hogg argues that the reason that Provinces were restricted to direct forms of taxation by the Constitution was to ensure that such taxes were truly intra-Provincial. He writes as follows²⁰:

Why does s.92(2) limit the provinces to direct taxation? The answer is that the limitation is a corollary to the general principle ... that provincial taxing powers (like other provincial legislative powers) are confined to the territory of the province. The leading feature of an indirect tax is, as we have noticed, that it is likely to be passed on by the initial taxpayer through the incorporation of the tax into the price of goods or services provided by the initial taxpayer. What this means is that a tax that is initially levied on a taxpayer within the province could ultimately be borne by a consumer outside the province. If that occurred, the province would be taxing a person to whom it provided no governmental benefits and to whom it was not accountable. This result is avoided if the province is restricted to direct taxation, where the initial taxpayer within the province is also the person who ultimately bears the tax.

- It has been argued that taxes on fuel in particular are outside the taxation powers of the Province, because fuel, more or less by definition, is easily transportable and could very well be “used” outside the Province in which it is sold. In *Air Canada v British Columbia*²¹ the applicant argued that BC’s fuel taxes were unconstitutional, or in the alternative could not apply when the fuel concerned would be consumed primarily outside of BC. La Forest J, writing for himself and Lamer and L’Heureux-Dubé JJ, responded as follows²²:

The airlines argued that the tax was a tax on the consumption of gasoline. Since most of that consumption, so far as the airlines were concerned, was in the airspace, which falls outside the province (see *R in right of Manitoba v Air Canada* [1980] 2 SCR 303), the tax was imposed outside the province. I cannot agree with this contention. The Act clearly does not impose a consumption tax. The references in the definition to consumption or use merely define the taxpayer, ie, a purchaser who buys gasoline for his own use. Since the tax is imposed in the province in respect of the purchase of gasoline, it does not matter where the gasoline is consumed, whether it is in the airspace or in another province.

- Could it therefore be argued that a tax on a vehicle sold in BC to a purchaser in BC, whether or not that purchaser intends to resell the vehicle, is valid and therefore no exemption or refund need be given? The alternative argument is that in such a case, the tax would “cling” to the car and not the final consumer, which constitutes an

²⁰ Peter Hogg, *Constitutional Law of Canada* (5th ed), Carswell, 2013 at 31-8 to 31-9.

²¹ [1989] 1 SCR 1161.

²² *Ibid* at 1187.

unconstitutional indirect tax on the *CPR v A-G for Saskatchewan*²³ line of reasoning. Furthermore, the car is not, despite possible claims to the contrary to the dealer, for the purchaser's "own use".

- The Supreme Court of Canada considered this issue again in *Reference re Quebec Sales Tax*²⁴. At issue here was the constitutionality of a revamped Quebec sales tax which closely mirrored the Federal Goods and Services Tax (GST), including a system of input refunds. Gonthier J, writing for a unanimous court, upheld the constitutionality of the tax, and stated as follows²⁵:

As to the concern that a value-added tax might result in taxation of persons outside the province by indirect means, it must be recognized that the collection of the bulk of tax revenues prior to the retail level creates the possibility that a good shipped to another province will carry with it the provincial tax as part of its price. This situation does not arise with the existing sales taxes because they are imposed exclusively at the retail level and not at the wholesale or manufacturing level. Absent provision for a refund in cases where the good is shipped outside the province, the manufacturer or wholesaler would clearly attempt to recoup the tax paid on the particular good from the consumers in the destination province.

The drafters of the proposed Act, however, have avoided this problem. Section 12 identifies "a supply shipped outside Québec" as a zero-rated supply. As a zero-rated supply, no tax is collected from the recipient and the registrant making the supply is eligible for an input tax refund corresponding to the tax initially paid. The refund thus ensures that the proposed tax has no extra-territorial effects.

- s.13

s.13 The *Quebec Sales Tax* case demonstrates that a tax that would otherwise be extraterritorial in scope can be made "direct" and constitutionally valid by means of an exemption, refund or zero-rating mechanism for goods exported outside the Province, but that judgement nevertheless seems to make clear that such mechanisms are essential so as to avoid taxation of goods that leave the Province.

²³ [1952] 2 SCR 231.

²⁴ [1994] 2 SCR 715.

²⁵ *Ibid* at 732.

s.13

APPROVED / NOT APPROVED

Michelle Dee

Date

MINISTRY CONTACT:

[click here](#)

PHONE #/E-MAIL: [click here](#)

Ministry of Finance
BRIEFING DOCUMENT

To: Lori Wanamaker
Deputy Minister

Date Requested:
Date Required:

Initiated by:

Date Prepared: 2019-05-02

**Ministry
Contact:**

Phone Number:
Email:

Cliff #:

TITLE: *Provincial Sales Tax Act* amendments relating to refunds of PST for purchasers who resell and export motor vehicles

PURPOSE:
(X) DECISION REQUIRED

Direction or decision required - signature block at end of BN

() FOR INFORMATION

Executive Director approval: _____

ADM approval: _____

DATE PREPARED: 2019-05-02

TITLE: *Provincial Sales Tax Act (PSTA)* amendments relating to purchasers who resell and export motor vehicles

ISSUE: Purchasers who claim refunds of provincial sales tax (PST) paid on new motor vehicles they purchase ostensibly for use in BC but in fact purchase for resale and exporter (Exporters) have created a continual workload for the ministry's Refunds Section that contributes to preventing the section from meeting the ministry's 30-day refund claim processing period standard.¹ Currently, all refund claimants can wait up to four months to receive their refunds.

BACKGROUND

Manufacturers control geographical distribution of their motor vehicles to limit the number of certain models in certain markets. To keep those markets from receiving too many of the limited models, the manufacturers prohibit their associated dealers from selling new motor vehicles to Exporters. Exporters who obtain new motor vehicles for export from BC typically avoid this prohibition by claiming to purchase the vehicle for their own use. They will also often utilize agents to purchase the vehicles so as not to arouse the suspicion of the motor vehicle dealers. The Exporters and their agents do not reveal the arrangements to the dealers, so that the dealers do not refuse the sales. The Exporters or their agents pay PST to the dealers, the Exporters resell the vehicles and then claim PST refunds from the ministry.

An Exporter's contravention of their purchase-and-sale contract with the dealer or the dealer's operating agreement with the manufacturer is a civil matter beyond the scope of PST legislation, whose rules allow the Exporter or their agents to obtain PST refunds if the claimant meets certain conditions, just as they do any other person who meets those conditions.

The ministry's website currently advises all PST refund claimants that it can take up to four months for their claims to be processed. This general delay is due in part to the workload arising from these types of transactions. From April 2014 through June 2018, the ministry's Refunds Section processed 11,490 buyer refund claims (see the appendix).

DISCUSSION

Any person who purchases a motor vehicle solely for resale, and therefore for something other than "use"², can claim an exemption from PST at the point of sale, by

¹This standard was set for fairness. Refund claimants, especially businesses that must manage cash flows, should receive refunds within a reasonable time.

² Under the *PSTA*, "use" of a motor vehicle **excludes** the storing, keeping or retaining of the vehicle for the sole purpose of resale.

Commented [SDMF1]: My research tells me that manufacturers limit export of all their vehicles, not "limited" vehicles. They limit the number of vehicles of any type their dealers can sell for export. (I really think my wording here and throughout the doc is more precise and accurate—eg, buyers, not exporters, are the resellers for the purposes of the refunds.)

Commented [SDMF2]: The buyer resells the vehicle, to the exporter. The buyer claims the refund, as the person identified as the purchaser on the sales doc, and even if the buyer used the exporter's funds.

Commented [SDMF3]: The purchase-and-resale contract is between the buyer and the dealer.

giving the dealer documentation specified by the ministry. Alternatively, the person can choose to pay PST to the dealer and then claim a PST refund from the ministry.

There is an additional exemption available to people who purchase a motor vehicle and then sell it within seven days.

In order not to reveal the true purpose of the purchase to the dealer, an Exporter typically chooses to pay PST and then claim a PST refund. s.13

Commented [SDMF4]: The seven-day rule has nothing to do with an exemption. It's a refund rule.

Commented [SDMF5]: As the person identified on the sales contract, the buyer pays the PST for the purposes of the refund, even if the buyer uses the exporter's funds. Refunds pays the refund to the purchaser identified on the sales contract: the buyer.

s.13

³ The seven-day refund rule applies only to a motor vehicle. There is no comparable rule for other tangible personal property.

s.13

s.13

APPROVED: Option 1 Option 2

Lori Wanamaker
Deputy Minister

Date

APPENDIX

Buyer refund claims processed April 2014 through June 2018

Fiscal year ending in	Claims	Approved	Refund interest	Interest per claim	Average days to process
2015	768	\$ 4,922,513.01	\$ 287.19	\$ 0.37	30
2016	1,042	6,940,648.74	4,194.41	4.03	49
2017	4,369	26,988,661.16	1,892.94	0.43	26
2018	3,386	21,815,574.98	8,518.56	2.52	60
2019	1,925	12,833,624.20	7,020.30	3.65	74
	<u>11,490</u>	<u>\$ 73,501,022.09</u>	<u>\$ 21,913.40</u>		

Ministry of Finance
BRIEFING DOCUMENT

To: Lori Wanamaker
Deputy Minister

Date Requested:
Date Required:

Initiated by:

Date Prepared: 2019-05-02

Ministry
Contact: Samantha Sherman

Phone Number: 778-698-8933
Email: Samantha.Sherman@gov.bc.ca

Cliff #:

TITLE: *Provincial Sales Tax Act* amendments relating to motor vehicle buyer-exporter agreements

PURPOSE:
(X) DECISION REQUIRED

Direction or decision required - signature block at end of BN

() FOR INFORMATION

Executive Director approval: _____

ADM approval: _____

DATE PREPARED: 2019-05-02

TITLE: *Provincial Sales Tax Act (PST Act)* amendments relating to motor vehicle buyer-exporter agreements

ISSUE: Buyers¹ who claim refunds of provincial sales tax (PST) paid on new motor vehicles they purchase ostensibly for use in BC but in fact for resale to exporters have created a continual workload for the ministry's Refunds Section that prevents the section from meeting the ministry's 30-day refund claim processing period standard.² Currently, all refund claimants can wait up to four months to receive their refunds.

BACKGROUND

Manufacturers control geographical distribution of their motor vehicles by prohibiting their associated dealers from selling more than a specified number of new motor vehicles to persons who will export them. Exporters who obtain new motor vehicles for export from BC typically avoid this prohibition by hiring buyers to purchase the vehicles as normal purchasers but in fact solely for resale to the exporters. The buyers do not reveal the arrangements to the dealers, so that the dealers do not refuse the sales. The buyers pay PST to the dealers, resell the vehicles to the exporters then claim PST refunds from the ministry.

A buyer-exporter arrangement's contravention of the buyer's purchase-and-sale contract with the dealer or the dealer's operating agreement with the manufacturer is a civil matter beyond the scope of PST legislation, whose rules allow the buyer to obtain a PST refund if the buyer meets certain conditions, just as they do any other person who meets those conditions.

The ministry's website currently advises all PST refund claimants that it can take up to four months for their claims to be processed. This general delay is due in part to the buyer workload. From April 2014 through June 2018, the ministry's Refunds Section processed 11,490 buyer refund claims (see the appendix).

DISCUSSION

Any person who purchases a motor vehicle solely for resale, and therefore for something other than "use"³, can exclude PST from the cost of the vehicle at the point of sale, by giving the dealer documentation specified by the ministry. Alternatively, the person can choose to pay PST to the dealer as a normal purchaser then claim a PST

¹ In this document, "buyer" means a person who purchases a motor vehicle under a buyer-exporter arrangement.

² This standard was set for fairness. Refund claimants, especially businesses that must manage cash flows, should receive refunds within a reasonable time.

³ Under the *PST Act*, "use" of a motor vehicle **excludes** the storing, keeping or retaining of the vehicle for the sole purpose of resale.

refund from the ministry. If the person does make “use” of the vehicle, the person can still claim a PST refund, if the person resells the vehicle within seven days of the date of purchase or the person’s date of possession, whichever is later.

In order not to reveal the buyer-exporter arrangement to the dealer, a buyer typically chooses to pay PST as a normal purchaser then claim a PST refund. ^{s.13}

s.13

⁴ The seven-day refund rule applies only to a motor vehicle. There is no comparable rule for other tangible personal property.

s.13

s.13

APPROVED: Option 1 Option 2

Lori Wanamaker
Deputy Minister

Date

APPENDIX

Buyer refund claims processed April 2014 through June 2018

Fiscal year ending in	Claims	Approved	Refund interest	Interest per claim	Average days to process
2015	768	\$ 4,922,513.01	\$ 287.19	\$ 0.37	30
2016	1,042	6,940,648.74	4,194.41	4.03	49
2017	4,369	26,988,661.16	1,892.94	0.43	26
2018	3,386	21,815,574.98	8,518.56	2.52	60
2019	1,925	12,833,624.20	7,020.30	3.65	74
	<u>11,490</u>	<u>\$ 73,501,022.09</u>	<u>\$ 21,913.40</u>		

Page 74 to/à Page 75

Withheld pursuant to/removed as

s.13;s.17