

A TAXING QUESTION

As members have read previously in Front Line, the folks at the Canada Revenue Agency (CRA) have shown an increased interest in tax questions affecting dealers. The first form this took was in questioning tax exempt status for fees, such as dealer reserves, paid by banks to dealers for arranging financing.

In a recent audit, that was successfully appealed, CRA turned its attention to other business office products, such as “walkaway” or GAP insurance, that protect lease or financial payment obligations from risks, like loss of employment, critical illness, disability and accidental death.

Background

Applewood Holdings Inc. (Applewood) offered its lease and finance customers enrollment in a policy with Walkaway Canada Incorporated. The policy covered customers’ lease or financial payment obligations from risks such as loss of employment, critical illness, disability and accidental death and other perils.

Percentage of Extended Premiums Retained

Applewood’s share of those premiums (the amount of sales revenue they kept) represented a significant source of revenue for the company.

CRA’s HST Audit

CRA audited and reassessed Applewood on the basis that it should have charged HST on its revenues from the sale of the insurance products. Applewood did not charge HST on its sale of the insurance products, and instead treated those sales as exempt supplies of “agreeing to provide, or arranging for” a financial service. Applewood appealed CRA’s assessment.

The Court Decision

Justice Pizzitelli of the Tax Court of Canada overturned CRA’s assessment holding that Applewood was NOT required to charge HST on the sale of insurance products.

He determined, based on the evidence, that it was clear that Applewood either provided or arranged for an HST exempt financial service by selling insurance products to its customers and was not merely providing promotional or administrative services with respect to those products.

This was a crucial finding because if the activities amounted only to promotional or administrative activities, Applewood would have been required to remit HST on the portion of the fees it kept.

The “Takeaway” From “Walkaway”?

Based on the Applewood decision, the following factors may indicate whether a dealer is “arranging for” financial services instead of providing a taxable supply of promotional and administrative services:

- The customer clearly and objectively understands they are buying an insurance product;
- The dealer’s fees are calculated based on sales, and these fees do not compensate the dealer for any particular activities or expenses;
- The insurer has no direct contact with the dealer’s customer, unless the customer makes an insurance claim; and
- The insurer has no right to instruct, control, or supervise the dealer’s staff.

The Department of Justice did not appeal the Applewood decision to the Federal Court of Appeal, meaning this decision now represents the law of Canada in similar fact situations.

The full decision of the court can be found here:
<https://tinyurl.com/yclycaer>

Members that are selling or promoting insurance products to their customers should conduct a close review of their business arrangements, in consultation with their legal and tax advisors, to ensure that sales practices, procedures, and policies in the sale of insurance products are properly HST exempt.

Compliance Quiz

1. True or False? A Discipline Panel hearing can be held in secret?

2. How many people, at minimum, must sit on a Discipline Panel?
 - (a). Three
 - (b). One
 - (c). Two
 - (d). Five
 - (e). It depends on the size of the table.

3. If a Discipline Panel seats three members, how many of them must be OMVIC registered?
 - (a). Three
 - (b). One
 - (c). Two
 - (d). None
 - (e). It is up to OMVIC.

4. If a Discipline Panel hearing involves a dealer (as opposed to a salesperson) at least two members of the Panel must be a dealer or an officer/director of one.

Q. True or False?

5. If a Discipline Panel hearing involves a salesperson (rather than a dealer) at least one member of the Panel must be a salesperson.

Q. True or False?

"As Is" Means More Than Just "No Safety"

Recently a dealer sold a luxury car "As Is".

Actually, the out-of-town customer said he wanted to buy it certified, but he couldn't wait the extra day to get the vehicle inspected, so he agreed to a \$300 reduction in the price and signed a bill of sale, intialled the "As Is" clause and drove home.

Trouble was, when he got there, he took the vehicle for an inspection and ... \$5,000 later ... the dealer is being asked to pay for the cost of the certification!

Some thoughts:

1. Dealers who sell a vehicle "As Is" should not let the purchaser drive the vehicle off the lot - a customer who "really" wants an "As Is" car needs to understand that means it's not being sold as a "drivable vehicle".
2. Qualify your buyer ... do they really want to buy an "As Is" car, or are they just looking to buy a car without a safety? These are very different buyers.
3. Don't try to speculate as to what the vehicle might need, or how much it might cost, to safety an "As Is" car ... you don't know. If you turn out to be wrong, it's a guarantee the customer will come back to you complaining!

When selling a vehicle "As Is", dealers SHOULD:

- explain fully to the customer that the vehicle is not roadworthy and that the purchaser is responsible for all costs (which could be substantial) to make it roadworthy
- have the customer read and initial the required "As Is" clause on your Bill of Sale
- deliver the vehicle to the customer or to the customer's mechanic, or ensure that the customer has the vehicle towed away

When selling a vehicle "As Is", dealers SHOULD NEVER:

- just write "As Is" on the bill of sale
- let the customer drive away in an "As Is" vehicle
- provide a Safety Standards Certificate or an opinion as to what it might take to certify an "As Is" vehicle
- sell an extended warranty on an "As Is" vehicle

Dealer Plates

Based on the low number of complaints we received, 2018 was a pretty good year for dealer plate enforcement by police forces around the Province. That is not to say that we do not still see problems from time-to-time and so a handy reminder might be in order.

Personal Use

Personal use of dealer-owned "passenger-class" vehicles with dealer plates is absolutely legal, but not on "commercial vehicles" (ie. pickup trucks, cargo vans, ambulances, etc.) where the cargo area is separate from the passenger compartment.

Dealer Plates may also be used on dealer-owned vehicles for all purposes related to the sale of the vehicle and this includes commercial vehicles.

Documents Needed!

A dealer plate is not restricted to use by the owner of the dealership. It may be used by anyone who has the permission of the dealership; that would include staff and potential

buyers who have the vehicle for testing purposes.

Three documents must be with the vehicle whenever a dealer plate is used ... not just when it's used for private purposes:

1. a true copy (meaning a clear copy of the front and back) of the permit for the dealer plate
2. the insurance certificate (pink slip)
- 3*. a true copy of the vehicle permit.
* If the vehicle has recently been purchased, a copy of the Bill of Sale may be accepted by the police.

Please call the UCDA if you would like a handy wallet card that you can show the police if you are stopped and asked about your use of the Dealer Plate.

If you are charged in circumstances you do not believe to be fair or accurate, just give the UCDA a call. We have helpful documents that you can show the Crown Prosecutor or the Judge.

Certification Course Classes

Eight OMVIC certification classes are being taught by UCDA trainers through to the end of March.

Tuesday, February 26 – Georgian College, Barrie

Wednesday, February 27

Tuesday, March 5

Thursday, March 7

Thursday, March 14

Thursday, March 21 – Hilton Garden Inn,
2400 Alert Rd. Ottawa

Tuesday, March 26

Thursday, March 28

Unless noted, all classes are taught at Wye Management's training facility, 55 Wings Road, Unit 1, in Woodbridge.

Wye Management – Basic Sales Techniques Class

Three Wye Management Basic Sales Training classes have been scheduled through May. Students taking an in-class Certification course receive a discounted rate for the sales training course. These courses are also taught at Wye Management's training facility.

Monday, March 4

Monday, April 1

Friday, May 3

For more information and to register, please contact Michelle, at m.prince@ucda.org or Val, at v.maclean@ucda.org

Quiz Answers

1. **True, although rare, a Panel could order a hearing to be closed to the public.**

"16. If a hearing before the discipline committee is closed to the public, the committee may order that evidence given and submissions made at the hearing not be disclosed to any member of the public. O. Reg. 332/08, s. 16."

2. **a. Three**

"14. (1) When a matter is referred to the discipline committee, the chair of the committee shall assign a panel in accordance with this section to hear and determine the matter under subsection 17 (1) of the Act. O. Reg. 332/08, s. 14 (1).

(3) Subject to subsection 4.2.1 (1) of the Statutory Powers Procedure Act, the panel must be composed of at least three members of the discipline committee. O. Reg. 332/08, s. 14 (3)."

3. **c. Two**

"(4) If the panel is composed of three or more members of the discipline committee,
(a) at least two of the members of the panel must be registrants or officers or directors of a registered motor vehicle dealer;"

4. **False. Only one must be.**

"(b) if a registered motor vehicle dealer is the subject of the proceeding, at least one of the registrants who is a member of the panel must be a registered motor vehicle dealer or an officer or director of a registered motor vehicle dealer;"

5. **True.**

"(c) if a registered salesperson is the subject of the proceeding, at least one of the registrants who is a member of the panel must be a registered salesperson;"

LIEN SEARCHES

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Auto Check ... \$8.00

Carfax Canada ... \$35.50 • Owner History ... \$16.00

www.ucdasearches.com • 1-800-668-8265

CarFax Canada, Subscription Rate or Search as You Need ???

Since November 2018, CarfaxCanada reports have been available to members in a number of different ways.

CarfaxCanada and the UCDA both want to make sure that all members are doing the searches they need, in the most cost effective way possible. Now is the time to look at the searches you have done since November and decide what option is best for you.

Option 1.

Pull your Carfax Canada search from the UCDA search site, ucdasearches.com, at the same time as you pull a Lien search or Ontario History report.

You will get a complete Carfax Canada search along with a separate UCDA Accident Claims report. Together, these reports provide members with the most complete accident damage search available, at a cost of \$35.50.

Option 2

Members with larger inventories and sales volumes can purchase a subscription package from Carfax Canada and, depending on your lot size, pay one monthly price for as many searches as you need. Please note, that the UCDA Claims report data is not included with this option

Example: If you are pulling 20 searches a month the cost of Option 1 would be \$710. Contact your Carfax Canada Rep. to find out how much a subscription will be for your lot size. A subscription package will NOT be the best choice for every dealer.

Remember, all auction purchases include a Carfax Canada report and if you buy directly from another dealer, that dealer has likely pulled one as well.

Do the math and choose the option that works best for you.

The screenshot shows the UCDA Online Search Facility interface. At the top, there's a navigation bar with links like 'New Search', 'Previous Searches', 'Drive Check™', 'FAQ', 'Tech Support', and 'Lien Registration'. Below this is a table of search options:

VIN	Ontario Liens \$12.50*	Auto Check™ \$8.00	Ontario History \$16.00	Power Pack \$29.00	Out of Province Lien Search	Carfax Canada \$35.50
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Below the table is a 'Submit' button and a link to 'Click here to sign up for ontariocars.ca'. At the bottom, there are detailed descriptions for each search type: 'All Ontario Searches', 'Ontario Lien', 'Auto Check™', 'Ontario History', 'Out of Province Lien Search', 'Carfax Canada', and 'Can Check™'. A red circle highlights the 'Carfax Canada' column in the table.

List Your Inventory Free At Ontariocars.ca

It remains absolutely free to list your inventory on the UCDA's vehicle listing site: Ontariocars.ca.

Still don't have inventory listed on Ontariocars?

It's not too late to join almost 2,000 of your fellow UCDA members, who currently list nearly 70,000 vehicles on our Member-only site and receive conversions and leads at no cost.

Why list on Ontariocars.ca?

How about:

- More than 3,000 car shoppers visit the site each day

- No curbsiders or private sellers to compete against and skew the listed prices
- Easy syndication from Trader and Carpages or integration from your data aggregator or DMS
- Or quickly load your inventory yourself with the easy to use Ontariocars app
- And did we mention It's FREE

Contact Michelle at m.prince@ucda.org for more information and to start listing your inventory.

Start listing your vehicles for FREE right now.