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**Re: Comments and Proposed Administrative Changes to
British Columbia's PSTA**

Dear Ms. Goss:

On April 20, 2015, several members of Tax Executives Institute, Inc.'s ("TEI") Canadian Commodity Tax Committee met with representatives from the British Columbia Ministry of Finance ("the Ministry") Tax Programs Branch. In that meeting, Ministry staff informed TEI that "revenue-related" changes to the *Provincial Sales Tax Act* ("PSTA"), *Motor Fuel Tax Act* ("MFTA"), *Carbon Tax Act* ("CTA"), and their regulations are made during the provincial budget process beginning in September of each year. If required, "administrative" changes to the PSTA, MFTA, CTA, and their regulations not affecting tax revenues are made throughout the year.

This letter contains TEI's "administrative" comments and proposed changes to the PSTA and MFTA. TEI is concurrently submitting a separate letter to the Ministry's Tax Policy Branch outlining its revenue-related comments and proposed changes to the PSTA and CTA for the Ministry's annual budget process (copy attached).

The comments and proposed changes in this letter are not listed in order of importance. Many have been included in previous written correspondence from TEI and discussed with Ministry staff. TEI welcomes the opportunity to meet with Ministry staff to discuss these matters further.

About Tax Executives Institute, Inc.

TEI is the preeminent association of in-house tax professionals worldwide. Our approximately 7,000 members represent more than 2,800 of the leading corporations in North and South America, Europe, and Asia. TEI has over 850 members resident in Canada, which belong to chapters in Vancouver, Calgary, Montreal, and Toronto, and constitute approximately 12 percent of TEI's membership. TEI's Canadian members contend daily with the planning and compliance aspects of Canada's business tax laws. In addition, many of TEI's members resident outside of Canada work for companies with substantial activities in British Columbia and Canada. The comments in this letter reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

1. Assessments for Invalid PST Exemption / Exception Requests

The PSTA generally places responsibility for collecting and remitting Provincial Sales Tax ("PST") upon vendors that are collectors. Vendors do not have to collect PST if a purchaser provides a PST registration number, declaration form, exemption certificate, or proof of status as a farmer, Indian, agency of the Federal Government, or some other exempt person. The PSTA and its regulations identify the documentation or records that vendors must keep to support the non-collection of PST. The PSTA does not require vendors to verify the PST number or validate the declaration on the exemption certificate or its equivalent.

Subsection 203(1.1) of the PSTA provides that the Director may assess collectors for PST if the Director determines a collector "had reason to believe" a purchaser did not qualify for an exemption or exception. Subsection 199(1) of the PSTA provides that the Director may assess purchasers for PST if a purchaser "has not paid the taxes the person is liable to pay."

TEI understands that the Director only intends to issue assessments under subsection 203(1.1) of the PSTA if a collector granted a purchaser an exemption but the declaration or PST number provided by the purchaser includes clearly false information. Collectors are concerned that the Director could interpret subsection 203(1.1) more broadly and seek to collect PST from collectors rather than assessing purchasers under subsection 199(1). This would force vendors to remit the

tax to the Ministry and seek a reimbursement from purchasers. Locating and collecting unpaid PST from purchasers can be difficult and would create an additional expense for collectors.

TEI recommends amending subsection 203(1.1) of the PSTA to clarify that the Director may only assess a vendor if there is no opportunity for the Director to assess the purchaser under subsection 199(1) and there is evidence that the vendor relied on information that was clearly false.

2. Optional Service Contracts with No Scheduled Services

Section 1 of the PSTA defines “related service” as “any service provided to tangible personal property or any service provided to install tangible personal property,” subject to certain exceptions. There is concern that the definition of related services could be interpreted as encompassing optional service contracts with no scheduled maintenance.

PST Bulletin 105 – *Software* and PST Bulletin 303 – *Warranties, Service Contracts and Maintenance Agreements* both confirm that optional service contracts are not taxable if services are provided on an “as needed” basis. These bulletins are premised on the distinction between “optional” versus “mandatory” service contracts and “as-needed” versus “scheduled” services. While these PST Bulletins provide some comfort that optional service contracts are not taxable, the statutory definition of a “related service” does not address these distinctions.

Optional service contracts are complex and disputes may arise between PST auditors and taxpayers regarding the tax status of services rendered under such contracts. Parties in litigation are generally required to cite provisions from a tax statute or regulations rather than relying on an administrative guide such as a PST Bulletin.

TEI recommends adding a new provision to the PST Regulations to codify the rules for optional service contracts with no scheduled services. This action would provide certainty that such services are exempt from PST.

3. PST Refunds by Vendors

Sections 146 and 147 of the PSTA permit collectors to refund tax paid if a person subsequently informs the collector that the person had no legal obligation to pay the tax or the person produces documentation showing that it was entitled to an exemption. Both provisions require the collector to pay the refund to the person “within 180 days of the date the amount was paid.” Uncertainties remain, however, as to when the tax “was paid” for purpose of applying the 180-day period rule.

In most retail transactions, the sale is completed at a cash register and tax is billed and paid at the time of sale. However, in many non-retail transactions, the vendor makes the sale, bills the PST

on an invoice, and sends the invoice to the purchaser or lessor. The purchaser or lessor pays the invoice (and tax) after receipt.

Collectors must include tax on their PST returns in the period in which the invoice was issued even though the tax is not paid until the person pays the invoice. Purchasers and lessors that seek PST refunds typically demand that the 180-day rule begin on the date the purchaser paid the tax rather than on the date the vendor issued the invoice.

These refund provisions are further complicated because collectors are only authorized to refund PST that has been paid. This requirement prevents collectors from issuing credit notes and issuing revised invoices if a person provides exemption documentation before it pays the invoice on which the PST was charged.

TEI recommends amending sections 146 and 147 of the PSTA to eliminate the requirement that PST be paid before a collector can refund the PST, extend the limitation period from 180 days to four years to match the statutory period for issuing assessments, and use the invoice date rather than the date the tax was paid for the limitation period to eliminate any confusion on this matter.

4. PST Self-Assessed When No Legal Obligation to Pay

Section 49 of the PSTA requires a person to self-assess PST on the date an item is imported into British Columbia. If the person is a collector, it is required to add the self-assessed tax to its PST return for the period in which the import occurred, with remittance due 30 days after the last day of the reporting period. Occasionally, after remitting PST, a person will determine it is entitled an exemption or the non-resident seller has collected PST.

There is no mechanism for obtaining a credit or deduction for the erroneously self-assessed and remitted PST. Section 146 of the PSTA permits collectors to obtain a refund of PST if the person who paid the tax had no legal obligation to pay the tax. However, Section 146 does not apply to refunds of self-assessed tax (i.e., where the person paying and remitting the tax is the same). Section 152 of the PSTA also allows for a refund of PST in two very specific cases, neither of which applies to self-assessments. There appears to be no policy rationale for denying refunds of erroneously self-assessed PST given that collectors can refund PST erroneously billed to purchasers for up to 180-days after the tax is paid.

TEI recommends amending section 146 of the PSTA to allow collectors to claim a credit or deduction for erroneously self-assessed PST for up to 180-days after a payment was remitted.

5. Exports – Customers Shipping Property Using Own Conveyance

Section 26 of the PST Exemption and Refund Regulation provides a point of sale exemption for exported tangible personal property but only if the property is shipped by the vendor or seller to

a location outside of British Columbia. If the purchaser uses its own conveyance to export the property from British Columbia, the purchaser must pay the PST to the vendor but can claim a refund under section 158 of the PSTA, a refund provision that is specific to exported tangible personal property. This process is time consuming for the Ministry and purchasers.

PST is not payable if the tangible personal property is exported using a common carrier. However, there are numerous operational reasons a purchaser might ship the property using its own conveyance rather than a common carrier, including but not limited to the nature and characteristics of the item being shipped, the location and capacity of conveyances, the location of supplier, the destination of the item being shipped, and project requirements. Exporting property using the purchaser's own conveyance should not impose additional tax compliance burdens.

The *Excise Tax Act* ("ETA") eliminates the need for purchasers to pay GST/HST on tangible personal property exported using the purchasers' own conveyance. Section 1 of Schedule VI Part V of the ETA provides a zero-rating for exported tangible personal property if the purchaser can produce "evidence satisfactory to the Minister of the export of property by the recipient." Such "evidence" typically includes customs clearance certificates, way bills, movements of dangerous goods tickets, and carrier invoices. If such documents are not available, GST/HST auditors may rely on the contract of sale, purchase order, and invoice information to confirm that the property was exported.

TEI recommends amending Section 26 of the PST Exemption and Refund Regulation to mirror the ETA's export provisions.

6. Audit Period – Waiver Letter

Subsections 200(2) and 203(4) of the PSTA allow a person to waive the limitation on an assessment period by entering into a written agreement with the Director. Such agreements can only be amended by mutual consent.

The open-ended nature of PST waiver agreements makes it less likely persons will enter into such agreements. In contrast, subsection 298(8) of the ETA allows a person to revoke a waiver agreement on six months' notice.

TEI recommends amending the PSTA to provide taxpayers the right to revoke waiver agreements with six months' notice, consistent with the waiver provisions of the ETA. Providing a mechanism to limit the duration of waiver agreements would significantly increase the likelihood that taxpayers will enter into such agreements and provide greater flexibility to manage difficult audit issues.

7. PST Rulings – Retroactive Changes

During several recent presentations to tax advisors, Ministry staff has stated that the Ministry is not bound by PST rulings (or other tax rulings it has issued) if the ruling is incorrect. Ministry staff has also stated that if the Ministry determines it has issued an incorrect ruling, a revised ruling will be issued with retroactive effect.

This matter was discussed during the April 20, 2015 meeting between TEI and Ministry staff. Ministry staff stated that the Taxpayer Fairness and Service Code (the “TFS Code”) supports the retroactive application of changes to PST. TEI has reviewed the TFS Code and it appears to support the opposite position: changes to PST rulings should be applied prospectively.

Specifically, the TFS Code provides:

The right to fair treatment

You have the right to expect we will apply the law fairly and impartially. Treating you fairly includes:

- making just, fair and timely decisions in accordance with the law by taking into account all circumstances relevant to the decisions we are making;
- abiding by written advice, in the form of a tax ruling or interpretation letter requested by you, that is specifically applicable to your circumstances as disclosed and in accordance with the law;
- listening to you and giving you the opportunity to provide information and evidence to support your position, so we may understand all of the circumstances involved; and
- acknowledging any errors we may have made and correcting them in a timely manner.

Written Advice

You have the right to request and obtain written advice regarding your obligations and entitlements. We will provide you with general advice to address your situation in a timely manner. If you request, we will also provide written advice, such as technical interpretations or rulings on legislation.

(Emphasis added.)

The Canada Revenue Agency (“CRA”) also indicates that changes to rulings it has issued will usually be applied prospectively. For example, Section 1.4 - Excise and GST/HST Rulings of the GST/HST Memoranda Series provides:

24. When the CRA discovers that a ruling is incorrect, it may revoke or amend it.

25. Where a ruling is incorrect because of an error on the part of the CRA, the revocation or amendment would generally apply as of the date of the revocation letter. However, there may be circumstances where the CRA would consider a request to have the revocation take effect on the date of the original ruling or on another appropriate date.

(Emphasis added.)

TEI commends the Ministry for its ongoing efforts to provide rulings to taxpayers. TEI maintains that PST rulings should bind the Ministry unless the taxpayer failed to provide a correct statement of facts and assumptions. If the Ministry determines it issued an incorrect ruling, the revised ruling should be applied to the taxpayer on a prospective basis. This policy will ensure that taxpayers can rely on rulings issued by the Ministry.

8. PST Exemption – Adult Sized Clothing Acquired for Children

Section 9 of the PST Exemption and Refund Regulations include an exemption for adult-sized clothing and footwear purchased for children under age 15. To grant this exemption, collectors must obtain, among other things, the full name and address of the purchaser to certify that the items were acquired for a child under age 15. Collectors obtain this information from the purchaser on a FIN 425 Certificate of Exemption.

Although various rules protect the collection and retention of personal and private information, purchasers are often unwilling to provide all of the information requested on the FIN 425 certificate because of privacy and security concerns. This puts retail cashier staff in an awkward position and causes frustration for other customers waiting in line. Furthermore, purchasers sometimes leave the store before collectors realize that the FIN 425 certificate was not properly completed. PST auditors assess collectors for PST when FIN 425 certificates are incomplete, resulting in significant assessments that collectors cannot recover from purchasers.

TEI recommends revising the FIN 425 certificate to allow purchasers to certify their entitlement to the exemption using only their signature and printed name.

9. PST Exemption – School Supplies

Division 3 of the PST Exemption and Refund Regulation exempts specified school supplies from PST when obtained for the use of a student. No documentation is required to support the exemption; all that is required is a verbal acknowledgement that the school supplies are being purchased by or on behalf of a student or school authority.

Customers and cashiers are often confused about which items qualify for the school supply exemption. For example, erasers qualify for the PST exemption but correction fluid is taxable.

Bags specifically designed to carry school books and supplies are exempt but backpacks, knapsacks, and bags with wheels are subject to PST. Cashiers must refer to a list of qualifying items to determine if a product qualifies for the school supply exemption. This list includes many items that are no longer used and excludes items currently used by students, creating additional confusion.

Additionally, customers often wait until after the sale has been completed to request the school supply exemption. Such customers are typically referred to a customer service desk so the transaction can be reversed and re-billed on a PST exempt basis. This frustrates customers and creates additional paperwork for vendors.

It is unrealistic to require collectors to administer the PST exemption for school supplies. TEI recommends replacing the PST exemption for school supplies with a refundable tax credit that parents or guardians of students can claim on their personal income tax return. TEI also recommends amending the PST Exemption and Refund Regulation to provide school boards that purchase specified school supplies for student use with a separate PST refund mechanism.

10. PST Bulletins – Suggestions for New Topics

TEI acknowledges the time and effort the Ministry has devoted to preparing PST Bulletins and other administrative materials. These resources are helpful to businesses seeking additional guidance and enables businesses to provide Ministry materials to suppliers and customers to explain the application of the PST to the products and services they buy and sell.

TEI requests that the Ministry prepare and revise PST Bulletins on these topics:

E-Commerce - Cloud computing is a growing segment of e-Commerce. The number of services/products offered through “the cloud” is growing and changing daily, as is the structure of these offerings. Vendors and taxpayers need clarification regarding their respective registration, tax collection, and self-assessment obligations for cloud computing services and products. A new PST Bulletin is needed to address these issues.

Cranes That Run on Rails – The definition of “related service” in the PSTA excludes services to install tangible personal property that will become affixed machinery on installation. This exclusion is available for cranes that run on rails. Subparagraph 73 (f) of the PST Exemption and Refund Regulation excludes related services provided to cranes that run on rails from the general exemption for services to affixed machinery, resulting in most services to cranes, other than installation services, being subject to PST. The taxation of services to cranes and uncertainty regarding which party is responsible to incur and bear PST on materials used in the provision of such services results in incorrect billings from suppliers. A new PST Bulletin, including detailed examples, is needed to

address these issues and provide greater certainty for suppliers and taxpayers entering into service contracts for cranes that run on rails.

Tugboats and Commercial Vessels and Barges – Section 55 of the PST Exemption and Refund Regulation provides an exemption for self-propelled vessels greater than 500 tons. Special rules for conveyances used in British Columbia and other jurisdictions often create disagreements between purchasers and suppliers of parts and services for these vessels. A new PST Bulletin is needed to assist purchasers and suppliers in resolving these disagreements without having to request rulings.

TEI will identify members who can assist Ministry staff with preparing these PST Bulletins at the Ministry's request.

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TEI welcomes the opportunity to meet with Ministry staff to discuss these comments and other issues relating to the administration of the PSTA, MFTA, and CTA to ensure that the system operates in a practical, effective, and efficient manner for the benefit of the Ministry and the business community.

TEI's comments were prepared under the aegis of TEI's Canadian Commodity Tax Committee, whose chair is Richard Taylor and whose legal staff liaison is Pilar Mata. Should you have questions about our recommendations, please call Mr. Taylor at (416) 935-2568 (or richard.taylor@rci.rogers.com) or Lynn Moen, TEI's Vice President for Canadian Affairs, at (403) 750-2278 (or lmoen@walton.com).

Respectfully submitted,

Tax Executives Institute, Inc.



C.N. Sandy Macfarlane
International President

cc: Lynn Moen, TEI Vice President for Canadian Affairs