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2014-2015 OFFICERS

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Wickliffe, OH

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ELI J. DICKER  
*Executive Director*

W. PATRICK EVANS  
*Chief Tax Counsel*

August 26, 2014

British Columbia Ministry of Finance  
Tax Policy Branch  
P.O. Box 9547 Stn Prov Govt  
Victoria, BC V8W 9C5

Attention: Bridget Minishka  
Executive Director

Via email: [bridget.minishka@gov.bc.ca](mailto:bridget.minishka@gov.bc.ca)

**Re: 2015 Budget – PST and MFT Suggestions**

Dear Ms. Minishka:

Earlier this year several members of Tax Executives Institute's ("TEI" or "the Institute") Canadian Commodity Tax Committee met with staff in the Consumer Taxation Programs Branch to discuss administrative aspects of the Provincial Sales Tax ("PST") and Motor Fuel Tax ("MFT") systems. Through this meeting, we learned that changes to the *Provincial Sales Tax Act* ("PSTA"), *Motor Fuel Tax Act* ("MFTA"), and the Regulations are generally handled through the provincial budget process that begins in September each year.

To provide input into the annual budget process, this letter summarizes our comments on various provisions in the PSTA, MFTA, Regulations, and the administrative guides issued by the Ministry of Finance (the "Ministry"). Our comments are not listed in order of importance and most of them 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.

TEI is the preeminent association of in-house tax professionals worldwide. The Institute's approximately 7,000 professionals manage the tax affairs of over 3,000 of the leading companies across all industry sectors in North and South America, Europe, and Asia. Canadians constitute approximately fifteen percent of TEI's membership, with our Canadian members belonging to chapters in Vancouver, Calgary, Montreal, and Toronto (which is TEI's largest chapter). These TEI members contend daily

Please Respond To:

Paul T. Magrath  
Director, Taxation  
AstraZeneca Canada, Inc.  
1004 Middlegate Road  
Mississauga, Ontario L4Y 1M4  
905.804.4930  
[paul.magrath@astrazeneca.com](mailto:paul.magrath@astrazeneca.com)

with the planning and compliance aspects of Canada's business tax laws. Many of our non-Canadian members work for companies with substantial activities in British Columbia and Canada generally. The comments set forth in this letter reflect the views of the Institute as a whole, but more particularly those of our Canadian constituency.

## **1. Assessments for Invalid PST Exemption / Exception Requests**

The PSTA generally places the responsibility to collect PST on the vendor. In cases where the 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 vendor is not required to collect the PST. The PSTA and the Regulations identify the documentation or records that must be kept on file by the vendor to support the non-collection of PST. There is no requirement to verify the PST number or validate the declaration on the exemption certificate or its equivalent.

Under subsection 203(1.1) of the PSTA, however, an assessment may be imposed on a vendor if the Director determines the vendor "*had reason to believe*" the purchaser does not qualify for an exemption or exception. Similarly, under subsection 199(1) of the PSTA, an assessment may be imposed on a purchaser who "*has not paid the taxes the person is liable to pay.*"

We understand the Director only intends to make assessments under subsection 203(1.1) of the PSTA if a vendor has granted an exemption when the declaration or PST number provided by the purchaser includes clearly false information. There is concern among vendors, however, that the Minister may broadly interpret subsection 203(1.1), rather than assessing purchasers under subsection 199(1). This would force vendors to remit the unpaid tax to the Ministry and seek reimbursement from purchasers. Locating and collecting from these purchasers can be difficult and may result in no recovery by the vendor of the tax.

To ensure subsection 203(1.1) is applied only in cases where the vendor should have known the purchaser did not qualify for a claimed exemption or exception, TEI suggests that subsection 203(1.1) of the PSTA be amended to make clear that an assessment can only be made against the vendor if there is no opportunity for the Minister to assess the purchaser under subsection 199(1) of the PSTA, or if there is evidence that the vendor relied on information that was clearly false.

## **2. Partnership as a Person for PST Purposes**

For PST purposes, partnerships are not treated as a separate person but as if the partners each own fractional interests in all of the partnership's property. This makes PST compliance more difficult for taxpayers participating in partnerships. This treatment also conflicts with the *Excise Tax Act*, under which a partnership is treated as a separate person for purposes of, among other things, allowing tax-free transactions within a closely related group and the ability to sell/purchase a partnership interest without triggering a tax liability.

Other jurisdictions such as Ontario (prior to adopting the HST), Saskatchewan, Manitoba, and certain states in the United States treat a partnership as a separate person for sales and use tax purposes.

TEI urges the Ministry to amend the PSTA and Regulations to treat partnerships as a separate person, using provisions that are similar to the *Excise Tax Act*.

### **3. Due Date for Returns Filed Using Fiscal Periods**

Under subsection 238(1) of the *Excise Tax Act*, the due date for GST/HST returns filed using fiscal periods is one month after the end of the reporting period. In contrast, under paragraph 72(1)(b) of the PST Regulation, the due date for PST returns filed using fiscal periods is “30 days after the last day of the collector’s reporting period.”

Taxpayers who adopt fiscal periods usually do so to simplify their financial reporting, treasury function, and tax compliance. Having different rules in the two sales tax statutes means the same due date for sales tax returns only occurs four times each year when a month has 30-days. This results in scheduling challenges and, on occasion, late remitted PST.

TEI urges the Ministry to amend the Regulations to make the due date for PST returns the same as the due date for GST/HST returns (*i.e.*, one month after the end of the reporting period).

### **4. Optional Service Contracts with No Scheduled Services**

Under the former Social Service Tax (“SST”), optional service contracts with no scheduled services were not part of the tax base because they fell outside the definition of a taxable service. To assist taxpayers, the Ministry’s position on these contracts was set out in former Consumer Taxation Branch (“CTB”) Bulletin 018 and in several references in the Tax Interpretation Manual (“TIM”).

Under the PSTA, the definition of a “related service” in section 1 is much broader than in the SST and could be interpreted to include optional service contracts where there is no scheduled maintenance. PST Bulletin 105 – *Software* and PST Bulletin 303 – *Warranties, Service Contracts and Maintenance Agreements* both contain paragraphs that confirm optional service contracts are not taxable where services are provided on an “as needed” basis. While the comments in these PST Bulletins provide some comfort that optional service contracts would not be taxable, they rely on two criteria not included in the statutory definition of a “related service” in the PSTA: optional versus mandatory contracts, and as-needed versus scheduled services.

Given the complexity of the agreements under which these types of services are provided, disputes may arise between PST auditors and taxpayers, leading to litigation. To defend a position in the courts, parties are generally required to cite provisions from a tax statute, rather than relying solely on an administrative guide such as a PST Bulletin.

TEI recommends that a new PST exemption be added to the Regulations to clarify the rules for an exemption for optional service contracts with no scheduled services.

## **5. Administrative Materials<sup>1</sup> Delivered from Outside British Columbia (“BC”)**

Based on PST Bulletin 313 – *Administrative Materials*, businesses with operations in BC and other jurisdictions are required to self-assess PST on the value of administrative materials (e.g., invoices, investment statements, annual reports, prospectus, and other written correspondence) mailed to BC-based customers from a location outside BC. This requirement creates significant administrative burdens and double taxation risk for businesses with operations in BC.

Significant effort is required to track the costs incurred to deliver administrative materials into BC, and double taxation often occurs because there is no relief of the sales tax paid on the printing, shipping, and handling fees in the jurisdiction where the materials are produced and mailed. Moreover, the majority of the landed cost for self-assessment purposes relates to postage, which would otherwise not attract PST if the materials were printed and mailed in BC.

If the Ministry intends to eliminate potential sales tax benefits resulting from printing and mailing administrative materials from another jurisdiction into BC, then PST should be imposed on the materials in a manner that will produce the same tax expense for the taxpayer as if the materials were produced and mailed in BC. The current rules do not achieve that goal.

TEI urges the Ministry to amend the PSTA and/or Regulations to trigger a deemed amount of tax on a per unit basis that equals the amount of tax that would be payable if the administrative materials were printed and mailed in BC, with a reduction for tax paid in other jurisdictions.

## **6. MFT / PST on Natural Gas**

The application of either the MFT or PST to natural gas depends on how the natural gas is used. MFT is payable on natural gas used in a stationary internal combustion engine, while PST is payable on other uses (unless an exemption is available). MFT on natural gas must be remitted on a return that is due on the 15<sup>th</sup> of each month. Invoices for natural gas, however, are not issued until the 20<sup>th</sup> of each month. This disparity often results in under-remitted MFT because the seller/importer of natural gas does not know the actual amount of natural gas used in an internal combustion engine when the MFT return must be filed. There is no problem with the timing of the PST remittance for natural gas used for other purposes because the PST return is not due until at least 8 days after the settlements are issued.

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<sup>1</sup> For the purposes of this letter, administrative materials *do not* include promotional materials as defined in the PSTA.

TEI urges the Ministry to amend the MFTA to move the filing/remittance date for MFT returns for natural gas to the end of the month to align the due dates for MFT and PST returns.

## **7. PST Refunds by Vendors**

Sections 146 and 147 of the PSTA permit vendors to refund tax paid on certain transactions when the purchaser subsequently informs the vendor that the purchaser did not have a legal obligation to pay the tax or the purchaser produces documentation showing it was entitled to an exemption. Both provisions require the vendor to pay a refund to the purchaser “*within 180 days of the date the amount was paid.*” Uncertainty remains, however, as to when tax “was paid” for purposes of starting this 180-day period.

In many retail transactions, the tax is billed and paid at the time of sale using a cash register. Conversely, in non-retail transactions, PST is charged on an invoice that is sent to the purchaser, and the invoice is paid on an undetermined date in the future. While the vendor is required to add the tax to its PST return for the period in which the invoice was issued, the purchaser generally does not pay the tax until it pays the invoice. In cases where a purchaser subsequently provides the vendor with an exemption certificate/declaration or PST number after the invoice is issued, the purchaser typically demands the 180-day rule be applied beginning with the date it paid the tax rather than the invoice date.

These refund provisions are complicated by the requirement that a vendor is prohibited from refunding the PST if it has not yet been paid. This prevents a vendor from issuing a credit note and then issuing a revised invoice if the purchaser provides exemption documentation before it pays the invoice on which PST was charged.

TEI urges the Ministry to amend the PSTA to state that the date the purchaser pays an invoice (including the PST) is the starting date for the 180-day limitation period on vendor refunds in sections 146 and 147. TEI also recommends an amendment to the PSTA that will allow vendors to revise invoices, or issue credit notes, to essentially refund PST on unpaid invoices in cases where the purchaser provides documentation to support an exemption or otherwise demonstrates the transaction should not be subject to the tax.

## **8. PST Self-Assessed When No Legal Obligation to Pay**

Under the PSTA, businesses must self-assess PST on imported items on the date the item is imported into BC. Most businesses, however, wait for an invoice from the seller confirming that no PST was paid to the vendor before self-assessing and remitting tax. This process also allows the invoice and the self-assessment to be set up in the general ledger, creating an audit trail between the import and the PST return. On occasion, a business will determine that an exemption is available after remitting self-assessed PST.

When that occurs, the PSTA does not appear to provide a mechanism for obtaining a credit or deduction for the erroneously self-assessed and remitted tax. Section 146 of the PSTA allows a refund of PST by a vendor where there was no legal obligation to pay the tax.

However, this section does not appear to contemplate a refund in the case of a self-assessment (*i.e.*, where the person who paid the tax and the collector are the same person). Section 152 of the PSTA also allows for a refund of PST to be paid by the Director, but only in two very specific cases, neither of which directly apply to self-assessments.

Given that a vendor is permitted to refund PST billed to a purchaser for up to 180 days after the tax is paid, there appears to be no policy rationale for denying vendors a similar mechanism to reverse an erroneous self-assessment. TEI urges the Ministry to amend section 146 of the PSTA to allow a vendor to claim a credit or deduction for PST self-assessed in error for up to 180 days after the PST self-assessment was remitted.

## **9. Inspection Services**

Paragraph 77(1)(h) of the PST Exemption and Refund Regulation provides what appears to be a fairly broad exemption for “diagnostic services, testing or safety inspections,” relating to tangible personal property. Limiting this exemption solely to “*safety*” inspections, however, seems overly restrictive, especially since neither diagnostic nor testing services require a safety component to qualify.

Diagnostic services typically refer to services performed to identify a problem. For example, if a machine were vibrating unexpectedly, a diagnostic service would identify whether a shaft is out-of-balance or a worn bearing is causing the vibration. In contrast, an inspection service means a service performed to ensure that a certain level of service, fitness to purpose, or quality is met. For example, a company is hired to inspect the assembly of machinery or an apparatus before it is put into service. Often a different service provider is used for inspections and diagnostic services with the latter brought in only when a problem has already been identified.

There appears to be no policy rationale for limiting the PST exemption to safety inspections. Thus, TEI urges the Ministry to amend paragraph 77(1)(h) of the PST Exemption and Refund Regulation to include all inspection services relating to tangible personal property.

## **10. Exports – Customer Ships Property Using Own Conveyance**

Many BC-based businesses make commercial sales of property to non-resident customers who use their own conveyances to pick up products in Canada for export. Typically, these non-resident customers are not registered for the PST because they do not operate within the province. Vendors located in BC are required to charge PST on these sales even though they are essentially an export. The non-resident customer may claim a refund of this PST directly with the Ministry. For GST purposes, the sale of goods in Canada to a non-resident customer for export is eligible for zero-rating, provided the vendor retains suitable documentation to verify the entire shipment can be traced from its origin in Canada to a destination outside Canada.

TEI recommends amending the Regulations to eliminate the requirement to collect PST on commercial sales of tangible personal property to non-resident customers for export using the

customer's own conveyance, provided the vendor retains export documentation to support the non-collection of PST on file. This treatment would be in line with the treatment of commercial exports under the GST/HST.

### **11. Recording Purchaser's PST Number**

Under paragraphs 145(1.1)(b) and (c) of the PSTA there is a requirement for a vendor to obtain (and record) information and documentation prescribed by the Regulations and required by the Director. For purchasers who are registered, the PST Exemption and Refund Regulation generally requires the vendor to obtain the purchaser's PST registration number. The Director has expanded this requirement by stating the following in PST Bulletin 002 – *Charging, Collecting and Remitting PST*:

*If they [the customers] do provide their PST registration number and you [the vendor] issue a bill, invoice or receipt, you must record that registration number on the bill, invoice or receipt to substantiate the non-collection of tax. Alternatively, you may record your customer's PST number on a written agreement that you have entered into related to that sale.*

TEI members appreciate the flexibility provided by the Director to record the registration number on the invoice, receipt, or a written agreement relating to the sale. However, the Ministry has stated that it is not acceptable to record the purchaser's registration number on a purchase order ("PO"), as the Ministry does not consider this to be a written agreement. The policy rationale for this position is unclear particularly where the PO is an extensive document meeting the legal conditions of a written agreement for the supply. In many commercial transactions, vendors and purchasers rely on a PO which becomes the agreement for purchase / sale. When a dispute arises regarding prices, quality, or quantities, etc., the PO is central to resolving the dispute because it is a written agreement (*i.e.*, a document that authorizes a vendor to deliver property or services for which the purchaser who issues the PO has agreed to pay the stated amount after delivery).

TEI recommends paragraph 145(1.1)(c) of the PSTA be removed to limit the information / documentation requirements to what is prescribed by the Regulations. This amendment will give flexibility to businesses while retaining the controls required by the Director to ensure the proper application of the exemptions in the PSTA and Regulations.

### **12. PST Exemption for Safety Equipment**

To promote the safety of workers in British Columbia, sections 32 and 33 of the PST Exemption and Refund Regulation exempts work-related safety equipment "*designed to be worn by a worker.*" Worker safety is an important public policy issue, as injury prevention saves lives, reduces public healthcare costs, and increases productivity. By limiting the exemption for safety equipment to items designed to be worn by a worker, the exemption does not cover all equipment that is required to prevent or mitigate worker injuries. For example, all the following items remain taxable:

- anti-fog equipment
- fire suppression equipment and blankets
- caution tape
- eye wash stations and showers
- grease resistant mats
- lamps for miners' hardhats
- portable manhole ventilators
- fall prevention equipment and railings
- seatbelts for stationary equipment
- fire sprinkler systems
- welding curtains, screens, blankets and ducting

In contrast, section 35 of the PST Exemption and Refund Regulation includes numerous safety-related items that qualify for a PST exemption, even though they are not designed to be worn by a worker. For example, none of the following items exempt under section 35 are designed to be worn by a worker: bicycle lights and reflectors, portable fire extinguishers, emergency gas shut-off devices, smoke alarms, and avalanche safety equipment.

TEI urges the Ministry to amend the PST Exemption and Refund Regulation to expand the safety equipment exemption to apply to all safety equipment that is acquired by a business to fulfill its obligations to protect workers under the *Workers Compensation Act*, Part 3 – Occupational Health and Safety, British Columbia Fire and Building Codes, and all similar federal statutes.

### **13. Audit Period – Waiver Letter**

Subsections 200(2) and 203(4) of the PSTA allow a taxpayer to waive the limitation on an assessment period upon entering into a written agreement with the Director. Those waivers can only be amended by mutual agreement of the taxpayer and the Director. The open-ended nature of PST waiver letters makes taxpayers less likely to use them. In contrast, subsection 298(8) of the *Excise Tax Act* allows the taxpayer to revoke a waiver on six months' notice.

TEI urges the Ministry to amend the PSTA to grant taxpayers the right to revoke an audit waiver letter on six months' notice consistent with the waiver provisions of the *Excise Tax Act*. Providing some mechanism for taxpayers to limit the duration of a waiver would significantly increase the likelihood that taxpayers would enter into waivers, allowing greater flexibility for taxpayers and the Ministry to manage difficult audit issues.

### **14. Administrative Appeal – Delays**

Under section 212 of the PSTA, taxpayers must wait for the Ministry's Appeals Branch to issue a decision before appealing a matter to court. This provides no incentive to the Minister to issue decisions in a timely manner and prevents taxpayers from litigating contested issues that could not be settled in the Appeals Branch. In contrast, the *Excise Tax Act* allows taxpayers to



initiate a court appeal 180 days after filing a Notice of Objection, even if a notice of decision has not been issued.

TEI urges the Ministry to amend section 212 of the PSTA to allow a decision of the Director to be appealed to the Supreme Court 180 days after an appeal has been filed with the Minister, regardless of whether the Minister has issued a decision.

### **15. Inventory Used for Demonstration Purposes**

Read together, the change of use provision in section 81 of the PSTA and the general definition of “use” in section 1 of the PSTA are broad enough to trigger the requirement to assess and remit PST if a non-tax paid inventory item is used for demonstration purposes on a temporary basis. The interaction of these provisions creates double taxation when an inventory item used for demonstration is later sold in a retail transaction.

TEI urges the Ministry to amend the definition of “use” in the PSTA to exclude the temporary use of inventory items for demonstration.

### **16. Pollution Prevention and Control**

Section 99 of the PST Exemption and Refund Regulation provides an exemption for machinery and equipment that is used substantially and directly in the prevention, measurement, treatment, and reduction of pollution. Currently this exemption is only available if the pollutants are attributable to manufacturing or the extraction / processing of petroleum, natural gas, or minerals. The exemption is further limited to a qualifying person who is a manufacturer, oil and gas producer, or a mine operator. When similar machinery and equipment is acquired by other industries or for marine operations there is no PST exemption even though they operate with a similar goal: the reduction of pollutants in the environment. Given BC’s high sensitivity for environmental concerns and the requirement for all taxpayers to follow government standards, all taxpayers who are required to acquire machinery and equipment to prevent and control pollution should qualify for a PST exemption to support the goal of creating a cleaner environment. Further, the exemption should be expanded to include consumables that are used to clean-up a pollutant spill.

TEI urges the Ministry to amend the PST Exemption and Refund Regulations to allow all taxpayers to acquire pollution prevention control machinery, equipment, and consumables on a PST exempt basis.

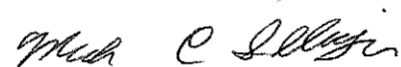
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TEI welcomes the opportunity to meet with Ministry representatives to discuss these comments and other issues relating to the administration of the PST to ensure that the system operates in the most practical, effective, and efficient manner to the benefit of both the Ministry and the business community.

TEI's comments were prepared under the aegis of the Institute's Canadian Commodity Tax Committee, whose chair is Richard Taylor. Should you have any questions about our recommendations, please do not hesitate to call Mr. Taylor at 416.935.2568 (or [Richard.taylor@rci.rogers.com](mailto:Richard.taylor@rci.rogers.com)) or Paul Magrath, TEI's Vice President for Canadian Affairs, at 905.804.4930 (or [paul.magrath@astrazeneca.com](mailto:paul.magrath@astrazeneca.com)).

Respectfully submitted,

**Tax Executives Institute**



Mark C. Silbiger  
*International President*

cc: Jordan Goss, British Columbia Ministry of Finance  
Paul Magrath, TEI Vice President for Canadian Affairs