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29 September 2016

Mr. Bev Dahlby (Chair)
Commission on Tax Competitiveness
c/o British Columbia Ministry of Finance
P.O. Box 9547 Stn Prov Govt
Victoria, BC V8W 9C5
CANADA

Via Email: taxcompetitiveness@gov.bc.ca

Re: Proposed Tax Improvements to Keep British Columbia Competitive

Dear Mr. Dahlby and Commission Members:

Each year, members of Tax Executives Institute, Inc.'s ("TEI") Canadian Commodity Tax Committee (the "Committee") meet in Victoria, British Columbia ("BC") with representatives from the BC Ministry of Finance ("the Ministry") Tax Programs and Tax Policy branches. At these meetings, Committee and Ministry representatives discuss administrative and technical issues relating to the *Provincial Sales Tax Act* ("PSTA"), the *Motor Fuel Tax Act* ("MFTA"), and the *Carbon Tax Act* ("CTA"). Following the meetings, the Committee typically prepares two written submissions; one proposing revenue-neutral "administrative" recommendations and the other proposing recommendations that will impact the revenue generated by the PSTA, MFTA and/or CTA.¹

Following this year's meeting, the Committee opted to prepare a single submission responding to the Commission on Tax Competitiveness's (the "Commission") call for feedback on how to improve BC's competitiveness through changes to the provincial sales tax ("PST") and other business

¹ TEI will provide copies of past submissions made to the Ministry at the Commission's request.

taxes. This letter contains TEI's recommendations and is based on some, but not all, of the administrative and revenue-related recommendations made in previous years.

TEI's recommendations focus on business taxes as required by the mandate of the Commission. We have used the term "Business" to broadly define the group of taxpayers that are not natural persons (individuals) and that operate on a for-profit or not-for-profit basis to simplify the submission.

The comments and recommendations presented in this letter are not listed in order of importance. TEI welcomes the opportunity to meet with the Commission to discuss these recommendations 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. Over 850 of TEI's members, approximately 12 percent, reside in Canada and belong to chapters headquartered in Vancouver, Calgary, Montreal, and Toronto. 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 residing outside of Canada work for companies with substantial activities in BC and Canada. The comments in this letter reflect the views of TEI as a whole but, more particularly, those of our Canadian Commodity Tax constituency.

Recommend Replacing BC's PST with a Made-In BC Value-Added Tax

TEI's principal recommendation for BC to become more competitive and to retain its provincial independence is for BC to replace its current PST with a made-in BC value-added tax ("BC VAT"). TEI recommends the BC Consumer Taxation Branch administer the proposed BC VAT.

TEI proposes that the BC VAT be set at a lower rate than the present PST and apply as broadly as the present GST. This combination would enable BC to replace the revenue generated from the PST while not increasing the amount of tax payable by consumers (as the previous HST regime did).

TEI maintains that the proposed BC VAT would decrease administrative costs for government and businesses. Simplification would also ease concerns for new businesses considering entering the province and make BC more competitive when compared with other jurisdictions with a retail sales tax, only GST, or HST.

Indeed, replacing the BC PST with a BC VAT would eliminate the need for many of the recommendations proposed below. In the event this proposal is not feasible, TEI makes the following alternate recommendations to increase competitiveness in BC.

Alternate PST Recommendations

1. Treat Partnerships as Persons for PST Purposes

Under the PSTA, a partnership can register as a collector for PST purposes, but is not treated as a separate legal person for purposes of owning partnership property. Instead, each partner is treated as if it owns a fractional interest in all of the partnership's property. This places responsibility on the partners to collect or pay PST on property owned by the partnership when an interest in the partnership is purchased or sold. In contrast, when shares in a corporation are purchased or sold, there is no requirement to account for PST on property owned by the corporation.

Proposed Recommendation: TEI maintains that a partnership should be treated as a "person" for PST purposes, including, among other things, the ability to sell/purchase a partnership interest without triggering a PST expenditure related to the partner's proportionate share of underlying partnership property and the ability to use exemptions for transactions within a closely-related group. Such treatment would be consistent with the treatment of partnerships under the *Excise Tax Act* ("ETA") and other jurisdictions, such as Ontario (prior to adopting the HST), Saskatchewan, Manitoba, and states in the United States of America.

2. PST on Commercial Imports

The PSTA requires Businesses to self-assess PST on tangible personal property ("TPP") imported into BC if a PST exemption is not available. Typically, Businesses are required to add self-assessed PST (calculated on the landed cost of TPP) 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.

However, in most cases, the process that calculates the self-assessment is tied to an accounts payable ("A/P") transaction that is not triggered until the invoice is received, approved, and paid. This can result in a several month delay in reporting the self-assessed PST. The cost, time, and effort required for a Business to set-up a separate process (one that is independent of the A/P approval process) to record and approve the self-assessed PST in the correct period is generally prohibitive. This results in the Businesses being exposed to an assessment for interest because Businesses cannot reasonably meet the PSTA deadline.

Moreover, Businesses that have put a process in place to comply with the short deadline for calculating and remitting the self-assessed PST often remit the tax only to determine later that an exemption was available or the non-resident seller already collected PST on its invoice. Currently there is no mechanism for deducting erroneously self-assessed PST from a subsequent PST return. Instead, Businesses that have erroneously remitted self-assessed PST must file a refund claim with the Ministry, which requires a significant amount of time and effort. There is no policy rationale for denying Businesses the ability to claim a credit for erroneously self-assessed PST on their subsequent PST returns.

Proposed Recommendation: TEI recommends that the Minister amend the PSTA and its Regulations to trigger the self-assessment of PST based upon the date a Business pays its invoice, and to allow Businesses to claim a credit on their PST returns for up to 180-days after remitting erroneously self-assessed PST. The proposed change will alleviate administrative burdens for Business and the Ministry.

3. Exports – Customers Shipping Property Using Their Own Conveyance

The PST Regulations provide a point of sale exemption for exported TPP, but only if the TPP is shipped by the seller or common carrier to a location outside of BC.

For operational reasons, such as the physical attributes of the item being shipped, the location and capacity of available conveyances, and project requirements, a Business operating outside of BC may choose to ship the TPP acquired in BC using its own conveyance.

If the Business (in this case, the purchaser) uses its own conveyance to export the TPP from BC, it must pay the PST to the seller and then claim a refund directly from the Ministry using a refund provision that is specific to exported TPP. The PST refund process is time consuming for the Ministry and the purchaser, and essentially taxes exports if the Business is not aware of the refund process.

TEI maintains that the decision of how to transport TPP should be based on operational and environmental concerns only; exporting property using the Business' own conveyance should not create additional tax and/or compliance burdens.

For example, the ETA eliminates the need for a Business to pay GST/HST on TPP exported using the Business' own conveyance. Section 1 of Schedule VI Part V of the ETA provides a zero-rating for exported TPP when the Business maintains "evidence" of the export of property by the customer. Such "evidence" typically includes customs clearance certificates, way bills, movements of dangerous goods tickets, carrier invoices, contracts of sale, purchase orders, and invoices.

Proposed Recommendation: TEI recommends that the Minister amend the PST Regulations to mirror the ETA's export provisions. BC Businesses who sell TPP for export will be more competitive if there are fewer tax compliance burdens on customers who export TPP. Also, providing greater flexibility on shipments will simplify decisions relating to the mode of transport for exported TPP.

4. Administrative Materials Delivered from Outside British Columbia

Businesses with operations in BC and other jurisdictions are required to self-assess PST on the landed cost of administrative materials (e.g., invoices, investment statements, annual reports, prospectuses, and other written correspondence, and its related postage cost) mailed to BC-based customers or clients from a location outside the province.

This requirement is problematic for several reasons:

- Significant effort is required to track the costs incurred to produce and deliver administrative materials into BC;
- Double taxation often occurs because the jurisdiction from which the administrative materials are produced and mailed may not provide relief from sales tax on the printing, shipping, and handling fees incurred prior to export; and
- The majority of the cost for self-assessment purposes often relates to postage, a cost not subject to PST if the materials had been printed and mailed in BC.

TEI maintains that the PST on administrative materials should be the same regardless of where the materials are produced or mailed. Other provinces with a retail sales tax address this inconsistency. For example, Saskatchewan does not require sales tax to be paid on postage if the value of the postage exceeds the value of the goods sent into the province. Manitoba only applies sales tax to statements printed in and sent to customers in Manitoba; statements printed outside of Manitoba and their associated shipment costs are not subject to sales tax even if the statements are mailed to parties in Manitoba.

Proposed Recommendation: TEI recommends that the Minister amend the PSTA and/or its Regulations to impose PST on administrative materials so that Businesses incur the same sales tax expenditure, irrespective of where the materials are produced. Doing so will reduce barriers to entry and increase business competitiveness.

5. Pollution Prevention and Control

The PST Regulations provide an exemption for machinery and equipment used substantially and directly in the prevention, measurement, treatment, and reduction of pollution. This exemption is only available if the pollutants are attributable to the manufacturing, extraction, or processing of petroleum, natural gas, or minerals. The exemption is further limited to Businesses that are manufacturers, oil or gas producers, or mine operators. There is no PST exemption for similar machinery and equipment acquired by Businesses in other industries, even though they operate under similar codes and rules that are intended to protect the environment. Finally, the PST exemption is not available for consumables used to clean up pollutants after a spill.

The PST payable by Businesses on pollution prevention and control equipment, and consumables is included in the cost of goods produced in BC. This increases prices, making it more difficult to compete with suppliers in jurisdictions that have lower standards for protecting the environment or which operate under a value-added tax regime.

Proposed Recommendation: TEI recommends that the Minister amend the PST exemption for pollution prevention and control equipment by making it available to all Businesses and expanding the exemption to include consumables.

6. Reusable Containers – Used in Multiple Jurisdictions

Returnable recyclable packaging containers (“RRPs”) including, but not limited to, pallets, reels, barrels, drums, cylinders, skids, and boxes, are used by many Businesses for internal shipments and/or shipments to customers. The use of RRP makes excellent commercial and environmental sense: packaging is minimized, costs are reduced, and the product is protected from shipping damage.

RRPs are filled, loaded, and shipped locally and to other jurisdictions. The location and movement of RRP is typically not tracked by Businesses due to the substantial administrative cost. Instead, ownership of the RRP is protected using a name and logo in large print on the RRP, allowing it to be returned to the Business.

PST is payable on the purchase or import of an RRP into BC, while packaging that is not returnable is generally exempt from PST. Further, RRP that are used in multiple jurisdictions, including BC, are subject to PST.

Proposed Recommendation: A general PST exemption should be available for RRP in order for BC-based Businesses to remain competitive and encourage the use of reusable packaging. Alternatively, a formula should be used to calculate the PST on

the anticipated amount of use of an RPP in BC. TEI thus recommends that the Minister amend the PSTA and its Regulations to impose PST on RPPs in a manner that is comparable to the application of PST to non-reusable packaging.

7. Inventory Used for Demonstration Purposes

Read together, the change of use provisions and the definition of “use” in the PSTA trigger a requirement to assess and remit PST if a retail inventory item is used by a Business for demonstration purposes on a temporary basis. The PST that is payable cannot be recovered from the customer, resulting in double taxation when the inventory item is later sold in a retail transaction. This is essentially a tax on retail inventory, which increases the costs of such goods and makes BC Businesses less competitive.

Proposed Recommendation: TEI recommends that the Minister amend the definition of “use” in the PSTA to exclude the use of inventory items for demonstration purposes.

8. Exemption Documentation Requirements

The documentation requirements in the PST Regulations to obtain a PST exemption are overly complicated and, in some cases, require sellers to request an exemption certificate.

Businesses increasingly rely on electronic recordkeeping, including mass invoicing systems and electronic procurement methods. This trend creates efficiencies in order processing and other business operations. Requiring Businesses to generate and maintain unique records to support PST filing requirements diminishes those efficiencies – especially when the data necessary to substantiate exemptions is already maintained in databases used for operational purposes.

Proposed Recommendation: TEI recommends the Minister amend the PST Regulations to grant exemptions without obtaining an exemption certificate if a seller maintains electronic data substantiating the basis for the exemption in its database. This will enable Businesses to take full advantage of automated procurement and accounts payable processes, while allowing auditors to efficiently review the basis for such exemptions electronically.

Alternate Carbon Tax Recommendations

9. Carbon Tax on Safety Breaches

BC makes the safety and well-being of employees and its residents a priority. The PST Regulations thus include many exemptions for safety-related equipment and material. However, similar exemptions are not available for other taxes.

For example, manufacturing sites and other locations may have safety breaches that are the result of unplanned upsets. To ensure the safety of those around, fuel is often flared. Such fuel is then subject to carbon tax, an expenditure that ultimately increases the cost of goods and makes BC Businesses less competitive.

Proposed Recommendation: TEI recommends that the Minister amend the CTA to eliminate all taxes on safety measures, such as the burning of fuel released for safety breaches.

10. Carbon Tax Exemption – Non-Combustion Use of Defined Fuels

Subsection 17(1) of the *Carbon Tax Regulations* provides an exemption for fuel used but not combusted during a list of specified activities. While this list of specified activities may have been suitable when the carbon tax was enacted on July 1, 2008, the list excludes, and thus subjects to tax, new and innovative uses of fuel that is not combusted.

Applying the carbon tax to non-combusted fuel is contrary to the overall intent of the CTA. Moreover, limiting the carbon tax exemption to activities listed in the *Carbon Tax Regulations* stifles research and innovation into new uses of fuel.

Proposed Recommendation: TEI maintains that the Minister should amend the *Carbon Tax Regulations* to eliminate the list of non-combustion activities qualifying for the exemption and to exempt all fuel that is not combusted.

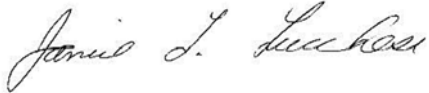
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TEI welcomes the opportunity to meet with Ministry staff to discuss these comments and other issues relating to the administration of the PSTA, MFTA, and CTA to ensure that the system operates in a practical, effective, and efficient manner for the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

TEI's comments were prepared under the aegis of TEI's Canadian Commodity Tax Committee, whose chair is David Card and whose legal staff liaison is Pilar Mata. Should you have questions about our recommendations, please call Mr. Card at (403) 699-1463 (or dcard@spectraenergy.com).

Respectfully submitted,

Tax Executives Institute, Inc.



Janice Lucchesi
International President