



TAX EXECUTIVES INSTITUTE, INC.

2011-2012 OFFICERS

DAVID M. PENNEY
President
General Motors of Canada Limited
Oshawa, Ontario

CARITA R. TWINEM
Senior Vice President
Spectrum Brands, Inc.
Madison, Wisconsin

TERILEA J. WIELENGA
Secretary
Allergan, Inc.
Irvine, California

MARK C. SILBIGER
Treasurer
The Lubrizol Corporation
Wickliffe, Ohio

DAVID V. DAUBARAS
Vice President-Region I
General Electric Canada
Mississauga, Ontario

JOANNE BONFIGLIO
Vice President-Region II
Balfour Beatty Management, Inc.
Ramsey, New Jersey

KAREN E. MILLER
Vice President-Region III
Ocean Spray Cranberries, Inc.
Lakeville, Massachusetts

RENEE M. ZUPONCIC
Vice President-Region IV
The Lubrizol Corporation
Wickliffe, Ohio

CHARLES A. FITZER
Vice President-Region V
U.S. Bancorp
Minneapolis, Minnesota

STEPHANY M. JACKSON
Vice President-Region VI
Newpark Resources, Inc.
The Woodlands, Texas

OWEN T. AUTRY
Vice President-Region VII
Gibson Guitar Corp.
Nashville, Tennessee

BRIAN C. UGAI
Vice President-Region VIII
Starbucks Coffee Company
Seattle, Washington

FABIO DE ANGELIS
Vice President-Region IX
Philip Morris International
Management, S.A.
Lausanne, Switzerland

TIMOTHY J. MCCORMALLY
Executive Director

ELI J. DICKER
Chief Tax Counsel

November 15, 2011

Hon. Kevin Falcon
Minister of Finance
Government of British Columbia
Room 153
Parliament Buildings
Victoria, BC V8V 1X4

Re: *Provincial Sales Tax – Improvements*

Dear Minister Falcon:

Earlier this year, residents of British Columbia approved a referendum to repeal the Harmonized Sales Tax and reinstate the Provincial Sales Tax. On August 26, 2011, the Ministry of Finance published its Action Plan to Re-implement PST. The Action Plan notes that the process of transitioning back to the PST will require much effort and a minimum of 18 months to achieve. That process will include consideration of “common sense administrative improvements to streamline the PST.” To assist the Ministry in this effort, Tax Executives Institute is pleased to recommend improvements to make the PST more efficient and administrable to the benefit of both taxpayers and the province.

Tax Executives Institute (TEI) is the preeminent association of business tax executives worldwide. The Institute’s 7,000 professionals manage the tax affairs of 3,000 of the leading companies in North America, Europe, and Asia. Canadians constitute 10 percent of TEI’s membership, with our Canadian members belonging to chapters in Vancouver, Calgary, Montreal, and Toronto, which together make up one of our nine geographic regions, and must contend daily with the planning and compliance aspects of Canada’s (and British Columbia’s) business tax laws. Many of our non-Canadian members (including those in Europe and Asia) 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.

Please Respond To:
David V. Daubaras
Vice President, Taxation
General Electric Canada
2300 Meadowvale Blvd.
Mississauga, ON L5N 5P9
905.858.5309
david.daubaras@ge.com

For ease of reference, we have grouped our recommendations for simplification and improvement into five categories:

1. PST Exemptions
2. Taxing Provisions
3. Filing and Compliance
4. Audit and Appeal Procedures
5. Other Simplification Opportunities

Given existing sensitivities to reductions in provincial revenues, we have limited our suggestions to areas where improvements can be made with little effect on overall tax revenue. Indeed, the recommended improvements will make the administration of the PST more efficient without negatively affecting the provincial budget.

TEI is also eager to assist the province in developing transition rules to complete the move from the HST to the PST. Since significant time and effort will be necessary for businesses to restore their PST systems and re-train their staff on PST matters, uncertainty over the date the PST will be reinstated remains a major issue. We encourage the Ministry of Finance to announce the specific date the PST will be reinstated as soon as possible.

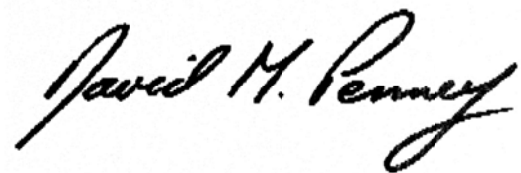
The Institute would be pleased to meet with Ministry representatives to discuss these comments and other issues relating to the PST system.

* * *

TEI's comments were prepared under the aegis of the Institute's Canadian Commodity Tax Committee, whose chair is Kim N. Berjian. If you should have any questions about our recommendations, please do not hesitate to call Ms. Berjian at 403.233.5480 (or Kim.N.Berjian@conocophillips.com) or David V. Daubaras, TEI's Vice President for Canadian Affairs, at 905.858.5309 (or david.daubaras@ge.com).

Respectfully submitted,

Tax Executives Institute



David M. Penney
International President

cc: Elizabeth Cole, Acting Executive Director – Tax Policy, Ministry of Finance
David V. Daubaras, 2011-2012 TEI Vice President for Canadian Affairs
Kim N. Berjian, 2011-2012 Chair of TEI's Canadian Commodity Tax Committee

TAX EXECUTIVES INSTITUTE, INC.

BRITISH COLUMBIA PROVINCIAL SALES TAX

PRACTICAL ADMINISTRATIVE IMPROVEMENTS

NOVEMBER 15, 2011

The Ministry of Finance has expressed interest in making “common sense administrative improvements to streamline the PST” which will be reinstated in the next 18 months.¹ This document sets forth areas within the former PST regime that Tax Executives Institute has identified as in need of improvement. Positive changes in these areas would result in a more efficient and administrable tax system to the benefit of both taxpayers and the province. We would welcome the opportunity to meet with Ministry representatives to discuss these issues in greater detail.

Please note that our suggestions have been numbered for ease of reference only, and that the numbering does not reflect any prioritization of those suggestions.

PST Exemptions

Jurisdictions imposing a retail sales tax utilize exemptions for both policy and practical reasons — to avoid multiple layers of tax on goods and services and to provide relief from taxation where items are deemed critical to consumers such as groceries and medicines. When the exemption process becomes burdensome, it puts in jeopardy the policy goals giving rise to an exemption. Under the PST, the information and documentation necessary to obtain numerous exemptions remains overly complicated, and, in some cases, requires sellers to collect information that is difficult to obtain from their customers. As a general matter, the Ministry should re-evaluate the exemption process as a whole to ensure it meets relevant policy goals as efficiently as possible. Below, we provide a list of specific areas that warrant immediate attention:

1. Sellers must report their customer’s vendor permit number on invoices to receive certain PST exemptions. Mass invoicing systems and new electronic procurement methods used by large businesses are not designed to collect this type of data. Sellers require greater flexibility in how they record the documentation necessary to support these PST exemptions. Consideration should be given to improving the Tax Payment Agreement rules where

¹ News Release, Action Plan in Place to Return B.C. to 12% PST/GST, British Columbia Ministry of Finance (August 26, 2011).

- purchasers of both taxable and exempt goods take on the responsibility to self-assess tax where required.
2. Sales to manufacturers of certain production machinery and equipment are exempt from PST. The rules require that the property purchased be used by the manufacturer in prescribed activities to qualify for the exemption. This can be a difficult determination to make when the machinery or equipment is purchased for inventory and the future use is unclear. TEI recommends that the exemption should be reconfigured to follow the integrated plant concept (*i.e.*, all sales to manufacturing plant locations should be exempt). Manufacturers would then self-assess on items later used for non-qualifying purposes. This would make the administration of the exemption more efficient.
 3. The rules for the production machinery and equipment exemption also expose sellers to a PST assessment if there is reason to believe the customer is not a manufacturer or the items sold may not qualify for the exemption. In practice, auditors have interpreted a seller's "reason to believe" very broadly creating an unjustifiably high burden of proof on sellers. The liability for incorrectly claiming an exemption should remain with the customer who requests the exemption since the customer maintains all information necessary to support qualification for the exemption unless the seller accepts a purchaser's claim for exemption in bad faith.
 4. The PST provides an exemption for children's clothing that applies to specified sizes. Adult-sized clothing purchased for use by children under 15 is also exempt if the registrant collects certain information from the purchaser. This includes personal data that customers often refuse to supply (*e.g.*, home address and telephone number). This exemption should be revised to match the more administrable point-of-sale rebate rules for children's clothing contained in the *Excise Tax Act*, which limit the exemption to specific children's clothing sizes. If adult-sized clothing is excluded from the exemption in this manner, it would eliminate the need for registrants to acquire additional information from their customers.
 5. Regulation 3.14 of the *Social Service Tax Act Regulations* provides an exemption for transfers of "tax paid" tangible personal property between parent and wholly owned subsidiary corporations. It is unclear if the "tax paid" will include the HST incurred on property acquired in British Columbia. TEI recommends that the Ministry should make clear that "tax paid" includes these HST amounts.
 6. To promote the safety of workers in British Columbia, section 71(k) of the *Social Service Tax Act* exempts work-related safety equipment "designed to be worn by a worker." Regulation 3.26 provides a list of the safety equipment exempt from PST under this rule. Worker safety should be enhanced by expanding the exemption to cover all related safety equipment and workspace modifications. For example, under the current rules, safety glasses worn by factory workers are exempt but mandatory emergency eye wash stations and most fire suppression equipment are not exempt.
 7. Extended warranty and maintenance services contracts may or may not be subject to PST depending on the terms of the contract. For sellers of these contracts it is difficult to know, at the time of purchase, whether parts and materials that are purchased for inventory will be used for taxable or non-taxable contracts. To ease the PST compliance burden on these businesses, the rules should be revised to exempt all purchases and then require a self-assessment on inventory items used to provide non-taxable maintenance services.
 8. Sales shipped to non-residents located outside of British Columbia are not taxable. This fits the general policy that a consumption-based tax, such as the PST, should be imposed by the

jurisdiction where the taxable good or service is consumed. In certain situations, sales of goods are delivered to a purchaser in British Columbia for subsequent export outside the province. A PST exemption should be available for sales to non-resident commercial customers who take delivery of property within the province if export documentation is maintained by the seller. This approach would be similar to the zero-rating rules in the *Excise Tax Act*.

9. Many software maintenance agreements include both exempt maintenance services and taxable minor fixes to existing software. This makes it difficult to determine which portion of the contract price is attributable to taxable, rather than exempt, services. To simplify this process, where substantially-all of the services provided relate to exempt maintenance services, the agreement should be PST-exempt in the same manner that all services relating to software were made exempt in 2006.

Taxing Provisions

10. Software licenses are subject to PST unless the software source code has been significantly modified or the software is “custom software.” These rules do not reflect the current state of how software is developed, modified, and licensed. The rules should be updated in a manner that treats system configuration without source code changes as custom or modified software.
11. Many of the definitions contained in the PST do not adequately cover newer technologies. For example, the definitions for basic phone and cable services should be modernized to reflect and accommodate new bundling options commonly offered by businesses.

Filing and Compliance

12. The PST requires each entity to file a separate return. For large groups of affiliated entities, this creates an unnecessary administrative burden. Separate filing also requires the Ministry to devote more of its resources to processing these returns than to other areas of PST administration. An election should be available allowing consolidated reporting for groups of closely related entities.
13. A person who is registered for the PST has both a (1) vendor permit number and (2) a nine-digit federal business number (BN) with a six-digit British Columbia identifier that starts with “BT.” Using two different numbers leads to confusion when a registered purchaser claims a PST exemption and provides the incorrect number. Also, there is no way for sellers to verify the vendor permit number online. It would greatly simplify records management if only the BN with the BT number were used.
14. The PST provides a refund mechanism for tax collected on amounts later written off as bad debts. It is unclear whether the PST rules will allow a refund of the provincial portion of HST on bad debts. A rule is necessary to allow British Columbia businesses to recover the provincial portion of HST remitted on bad debts that are written off after the PST is re-introduced.

Audit and Appeal Procedures

15. The Audit Period Limitation Waiver, and section 115(8) of the *Social Services Tax Act*, effectively extends the assessment period indefinitely since the waiver can only be amended by mutual agreement of the taxpayer and the Ministry. This makes taxpayers less likely to use them. The statute barring waiver rules should be revised in a manner that allows a person under audit to cancel a waiver on 60 days' notice as permitted under the *Excise Tax Act*.
16. The *Social Services Tax Act* imposes escalating penalties on recurring errors. Those penalties can be severe for inadvertent errors. The escalating penalty rules should be replaced with rules more similar to those in the *Excise Tax Act* which provide for a set penalty rate for errors or omissions.
17. Under the *Social Services Tax Act*, taxpayers must wait for the Appeals Branch of the Ministry to issue a decision before appealing a challenge to an assessment. This diminishes the taxpayer's ability to challenge an assessment in a neutral forum. A new rule is required to allow taxpayers to use the court appeal procedures when the Appeals Branch does not issue a decision within a set time period, similar to provisions in the *Excise Tax Act*.

Other Simplification Opportunities

18. For PST purposes, partnerships were not treated as separate persons but as if the partners owned direct fractional interests in all of a partnership's property under the *Seven Mile Dam* decision.² This creates myriad complications for taxpayers participating in partnerships when reporting their PST liabilities. Consistent with the treatment of partnerships under the *Excise Tax Act*, a partnership should be treated as a separate person for PST purposes. Additionally, partnerships should be eligible to qualify as members of a closely related group for purposes of PST exemptions applicable to closely related corporations.
19. Sellers are prohibited from refunding PST directly to purchasers. Instead, purchasers must apply to the Ministry for a refund when they return items for a refund, as a result of price adjustments, and when PST is charged in error. Allowing vendors to refund these amounts would eliminate this burden freeing up resources of both purchasers and the Ministry.
20. A seller that is a registered vendor should be able to use non-tax paid inventory for demonstration or temporary use purposes without triggering a tax liability on the full value of the item. This could be accomplished by treating the demonstration or temporary use period as a notional lease period with PST applied on a deemed value for the lease price.

TEI's comments were prepared under the aegis of the Institute's Canadian Commodity Tax Committee, whose chair is Kim N. Berjian. If you should have any questions about the recommendations, please do not hesitate to contact Ms. Berjian at 403.233.5480 (or Kim.N.Berjian@conocophillips.com) or David V. Daubaras, TEI's Vice President for Canadian Affairs, at 905.858.5309 (or david.daubaras@ge.com).

² *Seven Mile Dam Contractors v. Finance*, [1992] 5006 ETC (B.C.C.A.).