Executive Summary

National Smokeless Tobacco Company (NSTC) is filing a pre-budget submission proposing that the Government of Saskatchewan reform and modernize its tobacco tax categories. The province’s current tobacco tax category system lacks precision and fairness. NSTC supports fair and appropriate taxation of tobacco products; however, under Saskatchewan’s current tobacco tax categorization system, smokeless tobacco products are faced with the burden of being taxed in the same manner as completely unrelated and incongruent products.

Smokeless tobacco is very heavily taxed both provincially and federally. NSTC’s current suggested retail price of a 34 gram can of smokeless tobacco in Saskatchewan is $23.89 plus sales tax, or almost $10.00 higher than the average price of a package of 25 premium cigarettes.¹ This price differential, in addition to placing a disproportionate tax burden on adult smokeless tobacco consumers, means that it is cheaper to purchase cigarettes than to purchase non-combustible tobacco products in Saskatchewan.

From a policy standpoint, this outcome should be of concern to the Government of Saskatchewan. There is an overwhelming scientific, medical, and public health consensus that the consumption of non-combustible forms of tobacco is substantially less hazardous to health than smoking cigarettes. This consensus is based on extensive scientific research and evidence and is shared by many global public health organizations including the World Health Organization, the European Commission’s Scientific Committee on Emerging and Newly Identified Health Risks, and the United Kingdom’s Royal College of Physicians. With significant tax disparities existing between different tobacco products, the Government of Saskatchewan risks the unintended consequence of encouraging the use of smoked tobacco products over non-combustible tobacco products.

In this submission, NSTC is proposing that the Government of Saskatchewan reform its tobacco tax categories to more accurately reflect the current tobacco retail market in the province. The result would be a modern tobacco tax system that would provide the government with the ability to more accurately categorize tobacco products that are currently available for sale in Saskatchewan, as well as any new products that may enter the marketplace in the future. In addition, by refining tobacco tax categories based on unique products’ qualities, and by applying distinct tax rates to each, the government would have the flexibility to adopt a risk-based approach to tobacco taxation.

¹ Source: Based on NSTC SRP of $23.89; NSTC 25-count premium cigarette price survey SK Nov. 2015-Feb. 2016 (average reported price $14.53).
About NSTC

NSTC is the Canadian distributor of smokeless tobacco products manufactured under the brand names Copenhagen and Skoal. NSTC’s products are used orally and are not smoked. In Saskatchewan, these products are available in 14 gram, 15 gram, 23 gram and 34 gram formats; the majority of NSTC’s sales volume is in the 34 gram format. Smokeless tobacco has been sold in Canada since at least 1913.

NSTC’s products are for adults only. Children should not use any tobacco products and we take our responsibility seriously in supporting and participating in programs to reduce the underage use of tobacco products.

NSTC supports reasonable product regulation and complies with all federal and provincial laws. The restrictions on tobacco products and the level of accountability required of tobacco companies in Canada are significant, and include the following:

- **Federal restrictions prohibit**: sampling, price promotion, sponsorships, and advertising to the general public; and impose strict labeling requirements, high taxes, flavour restrictions, and minimum age-of-purchase requirements for tobacco products. Federal law also requires the submission of quarterly sales reports by product, quarterly marketing reports on permitted adult-only promotional activities, and routine reporting of all manufacturing processes and ingredients.

- **Provincial restrictions in Saskatchewan prohibit**: branded point-of-sale signage, visibility at retail, and sales at select venues such as post-secondary campuses, pharmacies, and health care facilities.

It is important to understand the actual sales of NSTC’s smokeless tobacco products in Saskatchewan and NSTC’s product offerings. As of January 2017, NSTC distributes 15 individual products across different sizes (14, 15, 23, and 34 gram cans), forms (long cut, fine cut, and pouches), and tobacco blends. Our smokeless tobacco products are available at more than 600 retail locations in the province.

NSTC’s products represent a small component of total tobacco sales in Saskatchewan. For the year ended December 31, 2015 (the last full-year data currently available), smokeless tobacco sales accounted for approximately 1.25% of all tobacco sold in the province. This represents approximately 760,500 34 gram cans of smokeless tobacco across all of NSTC’s product offerings as compared to more than 43 million packs of 25-count cigarettes. NSTC’s products are premium smokeless tobacco products and currently retail in Saskatchewan for almost $10.00 higher than a package of premium cigarettes.

Background

The Government of Saskatchewan currently has three categories of tobacco products subject to provincial tax under the *Tobacco Tax Act*. These categories are:

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3 Source: Health Canada Wholesale Sales Data, 2015.

4 Source: Based on NSTC SRP of $23.89; NSTC 25-count premium cigarette price survey SK Nov. 2015-Feb. 2016 (average reported price $14.53).
1. Cigarettes and tobacco sticks (taxed at 25 cents per stick);
2. Cigars (taxed at 100% of taxable value, minimum 35 cents and maximum $5.00/cigar);
and
3. Other tobacco, including raw leaf and snuff (taxed at 25 cents per gram).

The “other tobacco” tax category includes smokeless tobacco, a non-combustible oral tobacco product, and also includes fine-cut tobacco that is used by individuals who roll their own cigarettes for smoking. The “other tobacco” category essentially serves as a catch-all for any tobacco product that is not otherwise defined by Saskatchewan’s Tobacco Tax Act or Tobacco Control Act. Consequently, the category does not accurately capture the variety of tobacco products available for sale in the province.

It is important to note that the “other tobacco” category is in overall decline in Saskatchewan. Category volume has shrunk by almost 50% over the past decade in Saskatchewan, from more than 200,000 kilograms in 2004 to less than 90,000 kilograms in 2015. Within Saskatchewan’s “other tobacco” category, smokeless tobacco makes up a larger component of a shrinking category, yet is still subject to a provincial tax policy that is focused on tobacco for smoking and that is not reflective of the different nature of smokeless tobacco products.

There are unintended and serious consequences which could result from the government’s current tobacco tax category system. Under the existing structure that treats all products the same within the “other tobacco” category, the government is unable to make deliberate, focused tax rate changes to particular products without also making the same change to all products in the category.

The difficulties with a lack of precision in tobacco tax categories became very evident in 2009 when Alberta, a province with similar tobacco tax categories to Saskatchewan, sought to bring the tax for roll-your-own tobacco for smoking in line with the tax on cigarettes on a per stick basis. The government increased the tax on cigarettes by 8%, but increased the tax on other tobacco, including roll-your-own tobacco for smoking and smokeless tobacco, by 62%. While there was a stated policy rationale for raising the tax on roll-your-own tobacco for smoking, a consequence of this tax increase was a disproportionate and unintended tax increase on smokeless tobacco products. This occurred because smokeless tobacco products, although completely different from and incongruent to smoked tobacco products, are in the same tax category as roll-your-own tobacco for smoking in Alberta.

NSTC supports tax categories for tobacco products that more accurately reflect the differences between tobacco products in the marketplace today. Smokeless tobacco products are faced with the burden of being taxed in the same manner as completely unrelated and incongruent products. It is NSTC’s position that similar products should be taxed similarly, but different products should be taxed differently.

6 Source: Health Canada Wholesale Sales Data, 2015, based on reported fine-cut tobacco sales compared to smokeless tobacco sales.
**Recommendation**

The Government of Saskatchewan should modernize and update its tax categories for tobacco products as follows:

1. Cigarettes and tobacco sticks;
2. Cigars;
3. Pipe tobacco;
4. Roll-your-own tobacco; and
5. Smokeless tobacco.

Distinguishing between different tobacco products through unique tobacco tax categories would add precision and fairness to the Government of Saskatchewan’s tobacco taxation efforts, would better reflect current product manufacturing and the variety of tobacco products available for sale in the province, and would allow tax authorities appropriate flexibility and clarity in tobacco tax policy.

The United States, the world’s largest market for smokeless tobacco,\(^7\) uses 10 distinct federal tax classifications for tobacco products, including classifications specifically for “chewing tobacco” and “snuff” that are separate and distinct from loose tobacco for smoking.\(^8\) Sweden, which is the world’s second-largest market for smokeless tobacco\(^9\), also distinguishes “chewing tobacco” and “snuff” from other tobacco products like cigarettes, cigars, and smoking tobacco (roll-your-own and pipe tobaccos).\(^10\)

The emergence of innovative products, like e-cigarettes, for adult smokers as an alternative to traditional cigarettes further demonstrates the multiplicity of tobacco and tobacco-related products on the market today and speaks to the need for category modernization. The United States has recently brought regulation of these products under the Food and Drug Administration (Centre for Tobacco Products) and federal legislation in Canada is currently before the Senate to regulate electronic cigarettes under a new *Tobacco and Vaping Act*. Currently, seven U.S. states, the District of Columbia, and a handful of localities have enacted an excise tax on e-vapour products.

There is precedent within Canada for a wider range of provincial tobacco tax categories. In Nova Scotia and Nunavut, there is a tax policy distinction made between smokeless tobacco and other tobacco products. Since at least 1994, Nova Scotia has taxed cigarettes, cigarette tobacco, tobacco sticks and cigars at a different rate than chewing tobacco, snuff, pipe tobacco and unprocessed tobacco leaf.\(^11\) In 2015, Nunavut modernized its tobacco tax categories,

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\(^7\) Source: Euromonitor International, 2013  
\(^10\) Source: Swedish Tobacco Tax Act  
\(^11\) Source: Nova Scotia Ministry of Finance
distinguishing between smoked tobacco and non-smoked tobacco by establishing a “cigarette tobacco” category and a “loose tobacco” category.

NSTC proposes that the Government of Saskatchewan redefine its tobacco tax categories to recognize that smokeless tobacco is a different product than loose tobacco that is used for roll-your-own cigarettes. The government should create distinct tax categories for the different tobacco products captured under the current “other tobacco” category, and distinct tax rates should be applied to each. Given the significant price differential between cigarettes and smokeless tobacco products, it is NSTC’s position that any future tobacco tax rate increases in Saskatchewan should not impact smokeless tobacco products.

NSTC recommends that Saskatchewan’s Tobacco Tax Act be amended as follows:

**THE TOBACCO TAX ACT, 1998**

PART I  
Interpretation

2 In this act…

(l) “pipe tobacco” means “any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe; and

i. that displays the required health warnings, and toxic constituents information mandated by the federal Tobacco Products Information Regulations (SOR/2000-272) on its packaging

...

(o) “roll your own tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof; and

i. that displays the required health warnings, and toxic constituents information mandated by the federal Tobacco Products Information Regulations (SOR/2000-272) on its packaging

...

(g) “tobacco” means tobacco in any form in which it is used or consumed, and includes pipe tobacco, roll your own tobacco, snuff smokeless tobacco and raw leaf tobacco;

(r) “smokeless tobacco” means any finely cut, ground, or powdered tobacco that is not intended to be smoked or any leaf tobacco that is not intended to be smoked”; and

i. that displays the required health warnings, and toxic constituents information mandated by the federal Tobacco Products Information Regulations (SOR/2000-272) on its packaging; and

ii. that is sold in a package size of less than 50 grams.

PART II  

Tax

Tax payable by recipient
(1) Every recipient shall pay to the Crown a tax on tobacco:
   (a) at the time the recipient:
      (i) acquires or receives the tobacco from another person; or
      (ii) imports the tobacco into Saskatchewan; or
   (b) in the case of a person growing the tobacco in Saskatchewan for commercial
      purposes or manufacturing a tobacco product in Saskatchewan for commercial
      purposes, at the prescribed time and in the prescribed manner.

(2) The tax required to be paid pursuant to subsection (1) is to be paid at the following
    rates:
    (a) on every cigarette or tobacco stick, 25¢;
    (b) on every cigar, the greater of:
        (i) 35¢ per cigar; and
        (ii) 100% of the taxable price of the cigar to a maximum of $5 per cigar;
    (c) on every gram of tobacco, other than cigarettes, tobacco sticks or cigars, 25¢;
    (d) on every gram of pipe tobacco, purchased by that consumer, 25¢;
    and
    (e) on every gram of smokeless tobacco, purchased by that consumer, 25¢.

Fiscal and Administrative Impacts
Making the changes to Saskatchewan’s tobacco tax categories proposed in this submission
would not have a net fiscal impact on the Government of Saskatchewan. Taxes would still be
collected and remitted in the same manner as they are currently if these proposed changes
were implemented. No administrative changes would be required.

By establishing specific definitions for tobacco products that include references to federally
mandated packaging requirements, it will be clear to Saskatchewan tax enforcement officials
which tobacco products fall under the new tobacco tax categories.

By not further increasing the tax rate applied to smokeless tobacco products, the Government of
Saskatchewan would also mitigate additional contraband concerns. Large excise tax increases
create significant financial incentives for criminals to engage in illicit activity — activity that
undermines tax revenues and hurts law-abiding businesses. It is the government’s responsibility
to make policy decisions that deter, not encourage, illicit activity. The current price gap between
smokeless tobacco products sold in Saskatchewan and those sold in the United States can be a
difference of more than four-fold.12

Health Policy Impacts
The Government of Saskatchewan should also consider the potential health policy impacts of
these proposed changes to the province’s tobacco tax categories. There is an overwhelming

12 Source: NSTC, Altria internal sales data. Based on 2016 NSTC suggested RSP of $23.89 + GST, PST of smokeless tobacco
products in Saskatchewan vs. US$6.00 average price of premium smokeless tobacco products in Montana.
scientific, medical, and public health consensus that smokeless tobacco products, including those widely available in North America and Sweden (snuff and snus), are substantially less hazardous than cigarettes. Transitioning adult smokers from cigarettes to demonstrably less hazardous smokeless tobacco products could impact smoking cessation (number of years smoked), thereby reducing risk and harm.

Summary

The Government of Saskatchewan has the opportunity to modernize its current tobacco tax categories to better reflect the variety of tobacco products on the market today. There are precedents for this modernization. This modernization would entail a change to the existing “other tobacco” category, breaking it into new and distinct categories which recognize the unique nature of different tobacco products. These changes would also give the government the flexibility to adopt a risk-based approach to tobacco taxation, recognizing the different health risks associated with different tobacco products.

Making the tax category changes outlined above would be relatively simple, and would result in a modern tobacco tax system that would give the government increased flexibility to accurately categorize existing and new products. These changes would bring Saskatchewan in line with other jurisdictions that have acted to ensure precision in their tobacco tax systems and would provide greater clarity to provincial tobacco tax policy.