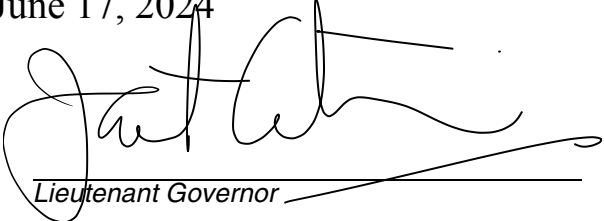


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 327

, Approved and Ordered June 17, 2024



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective July 1, 2024, the attached Tax Appeals Regulation is made.



Minister of Finance



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Carbon Tax Act*, S.B.C. 2008, c. 40, s. 84.1; *Employer Health Tax Act*, S.B.C. 2018, c. 42, s. 106.1; *Insurance Premium Tax Act*, R.S.B.C. 1996, c. 232, s. 42; *Logging Tax Act*, R.S.B.C. 1996, c. 277, s. 43; *Mineral Tax Act*, R.S.B.C. 1996, c. 291, s. 44.1; *Motor Fuel Tax Act*, R.S.B.C. 1996, c. 317, s. 74; *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378, s. 37.2; *Provincial Sales Tax Act*, S.B.C. 2012, c. 35, s. 245.1; *Speculation and Vacancy Tax Act*, S.B.C. 2018, c. 46, s. 138.1; *Tobacco Tax Act*, R.S.B.C. 1996, c. 452, s. 44.11

Other:

TAX APPEALS REGULATION

Contents

PART 1 – INTERPRETATION AND APPLICATION

- 1 Definitions
- 2 References to Supreme Court Civil Rules
- 3 Definition for Rule 16-1 and Forms
- 4 References in applicable provisions of Supreme Court Civil Rules
- 5 Provisions of regulation applied and interpreted consistent with Supreme Court Civil Rules
- 6 Appeals to which this regulation applies
- 7 Reference aids

PART 2 – PETITION PROCEEDINGS

- 8 Provisions of Rule 16-1 do not apply
- 9 Petitions
- 10 Response to petition
- 11 Filing and serving affidavits
- 12 Setting petition for hearing
- 13 Additional contents in petition record – modification of Rule 16-1 (11)

PART 3 – CROSS-EXAMINATIONS

- 14 Cross-examination of witness
- 15 Conduct of cross-examination before official reporter
- 16 Transcript of cross-examination

PART 4 – EXPERTS

- 17 Application of Part 11
- 18 Rules that apply
- 19 Expert report
- 20 Supplementary report
- 21 Production of documents
- 22 Notice of cross-examination to expert
- 23 Notice of objection to expert opinion evidence

PART 5 – EXPERT OPINION EVIDENCE AT HEARING

- 24 Tendering opinion evidence at a hearing
- 25 Cross-examination of expert
- 26 Conduct of cross-examination of expert before official reporter
- 27 Affidavit of expert
- 28 Transcript of cross-examination of expert
- 29 When court may dispense with requirement of this Part

PART 6 – WRITTEN ARGUMENT

- 30 Exchange of written arguments

PART 1 – INTERPRETATION AND APPLICATION

Definitions

- 1 (1) In this regulation:
“**hearing**” means a hearing of the petition;

“**minister**” means the Minister of Finance;

“**program administrator**” means the following individual applicable in relation to the appeal:

- (a) the director under the *Carbon Tax Act*;
- (b) the commissioner under the *Employer Health Tax Act*;
- (c) the commissioner under the *Insurance Premium Tax Act*;
- (d) the commissioner under the *Logging Tax Act*;
- (e) the commissioner under the *Mineral Tax Act*;
- (f) the director under the *Motor Fuel Tax Act*;
- (g) the administrator under the *Property Transfer Tax Act*;
- (h) the director under the *Provincial Sales Tax Act*;
- (i) the administrator under the *Speculation and Vacancy Tax Act*;
- (j) the director under the *Tobacco Tax Act*;

“**tax appeal proceeding**” means a petition proceeding that is an appeal to which this regulation applies under section 6.

- (2) For the purposes of this regulation, unless a contrary intention appears in this regulation, the definitions in the Supreme Court Civil Rules apply.

References to Supreme Court Civil Rules

- 2 A reference in this regulation to a Rule or Form is a reference to the Rule or Form in the Supreme Court Civil Rules.

Definition for Rule 16-1 and Forms

- 3 For the purposes of this regulation, in Rule 16-1 [*Petitions*] and Forms 67 [*Response to Petition*] and 68 [*Notice of Hearing*], “**petition respondent**” means the government.

References in applicable provisions of Supreme Court Civil Rules

- 4 (1) If a provision, referred to in this subsection as “that rule”, of the Supreme Court Civil Rules applies to a proceeding to which this regulation applies, that rule is to be read as follows:
 - (a) a reference in that rule to a particular provision of the Supreme Court Civil Rules that is the same as or similar to a provision of this regulation is to be read as a reference to the provision of this regulation;
 - (b) a reference in that rule to a particular provision of the Supreme Court Civil Rules that is modified in this regulation is to be read as modified;
 - (c) a reference in that rule to the Supreme Court Civil Rules is to be read as including a reference to this regulation;
 - (d) a reference in that rule to an action is to be read as a reference to a tax appeal proceeding;

- (e) a reference in that rule to a trial is to be read as a reference to a hearing unless that rule relates to or applies after transferring a proceeding to the trial list under Rule 22-1 (7) (d).
- (2) Subsection (1) or any other provision of this regulation that provides for changes to a provision of the Supreme Court Civil Rules, as that provision of the Supreme Court Civil Rules applies to a proceeding to which this regulation applies, applies in addition to any other changes the circumstances require for the purposes of this regulation and in addition to any other changes provided by another provision of this regulation.

Provisions of regulation applied and interpreted consistent with Supreme Court Civil Rules

- 5 In any case of doubt, the provisions of this regulation must be applied and interpreted in a manner consistent with similar provisions of the Supreme Court Civil Rules.

Appeals to which this regulation applies

- 6 (1) Subject to subsection (2), this regulation governs the practice and procedure of the Supreme Court in an appeal under the following Acts:
 - (a) *Carbon Tax Act*;
 - (b) *Employer Health Tax Act*;
 - (c) *Insurance Premium Tax Act*;
 - (d) *Logging Tax Act*;
 - (e) *Mineral Tax Act*;
 - (f) *Motor Fuel Tax Act*;
 - (g) *Property Transfer Tax Act*;
 - (h) *Provincial Sales Tax Act*;
 - (i) *Speculation and Vacancy Tax Act*;
 - (j) *Tobacco Tax Act*.
- (2) This regulation applies in relation to an appeal of a decision of the minister dated on or after July 1, 2024.

Reference aids

- 7 Italicized words in italicized square brackets are not part of this regulation, are included editorially for convenience of reference only and are not to be used in interpreting this regulation or any provision to which the words refer.

PART 2 – PETITION PROCEEDINGS

Provisions of Rule 16-1 do not apply

- 8 Rule 16-1 (1) to (8) and (16) does not apply to a tax appeal proceeding.

Petitions

- 9 (1) Subject to this section, a person wishing to bring a tax appeal proceeding must file a petition in Form 66.

- (2) A petition must contain the following:
 - (a) a statement identifying the decision of the minister that is being appealed and the date of the written notice or notification of that decision;
 - (b) a statement of all material facts giving rise to the appeal;
 - (c) the relief sought by the petitioner;
 - (d) a summary of the legal basis for the relief sought;
 - (e) the proposed place of hearing.
- (3) Part 4 of Form 66 is not required to be completed.

[A filed petition must be served on the government in accordance with the requirements of the Act under which the decision was made that is the subject of the appeal].

Response to petition

- 10** (1) If the government has been served with a copy of a filed petition, the government must
- (a) file a response to petition in accordance with subsection (2), and
 - (b) unless the court otherwise orders or with the written consent of the petitioner, serve the response to petition within 90 days after the date the petition was served on the government.
- (2) Subject to subsection (3), a response to petition must be in Form 67 and must contain the following:
- (a) for each fact set out in the petition, whether that fact is
 - (i) admitted,
 - (ii) denied, or
 - (iii) outside the knowledge of the government;
 - (b) whether the government consents to, opposes or takes no position on the granting of the relief sought in the petition;
 - (c) if the government opposes any of the relief referred to in paragraph (b), a summary of the legal basis for that opposition;
 - (d) a statement of any further material facts;
 - (e) a statement of the findings or assumptions of fact made by the minister in making the decision being appealed;
 - (f) a statement of the findings or assumptions of fact made by the program administrator in making the decision that was the subject of an appeal to the minister that resulted in the decision referred to in paragraph (e).
- (3) Part 6 of Form 67 is not required to be completed.

Filing and serving affidavits

- 11** (1) Unless the court otherwise orders or with the written consent of the government, the petitioner must, within 60 days after the date of service of the response to petition on the petitioner,
- (a) file all affidavits on which the petitioner intends to rely at the hearing, and
 - (b) serve on the government one copy of each of the filed affidavits.

- (2) Unless the court otherwise orders or with the written consent of the petitioner, the government must, within 120 days after the date of service of the response to petition served on the petitioner,
 - (a) file all affidavits on which the government intends to rely at the hearing, and
 - (b) serve on the petitioner one copy of each of the filed affidavits.
- (3) Unless the court otherwise orders or with the written consent of the government, the petitioner must, within 30 days after the date of service of affidavits served on the petitioner under subsection (2),
 - (a) file all affidavits that are in response to any affidavit served on the petitioner under subsection (2), and
 - (b) serve on the government one copy of each of the filed affidavits.
- (4) Unless all parties of record consent or the court otherwise orders, a party must not serve any affidavits additional to those served under subsections (1), (2) and (3).
- (5) If any additional affidavits are filed and served under subsection (4), the petitioner must provide to the registry an amended petition record containing those affidavits.
- (6) The person swearing or affirming an affidavit to be filed and served under this section may state only what the person would be permitted to state were the evidence to be given orally.
- (7) This section does not apply in relation to an affidavit of an expert filed under Part 5.

Setting petition for hearing

- 12**
- (1) Subject to subsection (2), a petitioner wishing to set a petition down for hearing must file a notice of hearing in Form 68, and serve a copy of the filed notice of hearing on the government, at least 7 days before the date set for the hearing.
 - (2) A petitioner may not set a petition down for hearing until
 - (a) any amendments to the petition have been served,
 - (b) the response to petition and any amendments to the response have been served,
 - (c) all affidavits on which a party intends to rely at the hearing have been served,
 - (d) all cross-examinations under Part 3 have been completed,
 - (e) all expert reports have been served,
 - (f) all cross-examinations under Part 5 have been completed, and
 - (g) the government has confirmed the completion of all steps to be taken before setting the petition down for hearing.
 - (3) If the government does not confirm for the purposes of subsection (2) (g) within a reasonable time after being requested to do so by the petitioner, the petitioner may apply, by requisition in Form 17 on 2 days' notice, for directions.

**Additional contents in petition record –
modification of Rule 16-1 (11)**

- 13** (1) In addition to the required contents of the petition record to be provided under Rule 16-1 (11), the petitioner must include in the contents of the petition record, to be included following the other content listed in paragraph (b) of that Rule, the following documents in the following order:
- (a) a copy of the transcript of any cross-examination under Part 3 of a witness who gave an affidavit that is to be referred to at the hearing before an official reporter;
 - (b) a copy of each expert report that is to be referred to at the hearing;
 - (c) a copy of the transcript of any cross-examination under Part 5 of an expert before an official reporter.
- (2) In addition to the required contents of the petition record to be provided under Rule 16-1 (11) and despite Rule 16-1 (11) (c) (ii), the petitioner must include in the contents of the petition record a copy of all written arguments served in accordance with section 30 of this regulation, to be included following the other content listed in Rule 16-1 (11) (b) and subsection (1) of this section.

PART 3 – CROSS-EXAMINATIONS

Cross-examination of witness

- 14** If a copy of an affidavit of a witness is served under section 11, any party adverse in interest to the party who filed and served the affidavit may
- (a) require the witness to be called for cross-examination before an official reporter, provided that party gives the party seeking to tender the evidence by affidavit written notice of the requirement within 45 days after receiving the affidavit, or
 - (b) require the witness to be called for cross-examination at the hearing with the consent of the party who filed and served the affidavit or by order of the court.

Conduct of cross-examination before official reporter

- 15** (1) A cross-examination under this Part is an oral examination on oath.
- (2) Unless the court otherwise orders or the parties otherwise agree, a cross-examination under this Part before an official reporter must take place at a location within 30 kilometers of the registry that is nearest to the place where the person to be cross-examined resides.
- (3) A cross-examination under this Part must be conducted before an official reporter who is empowered to administer the oath.
- (4) A person to be cross-examined under this Part before an official reporter must attend and submit to cross-examination if the party wishing to conduct that cross-examination has complied with section 14.
- (5) Cross-examination under this Part is not confined to matters contained in the affidavit.

- (6) If a person under cross-examination under this Part objects to answering a question put to them, the question and the objection must be taken down by the official reporter and the court may
 - (a) decide the validity of the objection, and
 - (b) order the person to submit to further examination and set a maximum duration for that further examination.
- (7) A cross-examination under this Part is to be taken down in the form of question and answer, and copies of the transcript may be obtained on payment of the proper fee by
 - (a) any party of record,
 - (b) the person cross-examined, or
 - (c) any other person as the court for special reason may permit.

Transcript of cross-examination

- 16** (1) If a transcript of a cross-examination under this Part is certified as an accurate transcription by the official reporter, the transcript may be tendered in evidence without proof of the reporter's signature.
- (2) Unless the court otherwise orders, the party conducting the cross-examination before an official reporter is responsible for payment of the costs of providing a transcript of the cross-examination to the court.

PART 4 – EXPERTS

Application of Part 11

- 17** Despite Rule 11-1 (1), Part 11 [*Experts*] of the Supreme Court Civil Rules applies to a tax appeal proceeding as provided in this Part of this regulation.

Rules that apply

- 18** The following Rules apply to a tax appeal proceeding:
 - (a) Rule 11-2 [*Duty of Expert Witnesses*];
 - (b) Rule 11-4 [*Appointment of Own Experts*], except that the Rule is not subject to Rule 11-1 (2).

Expert report

- 19** (1) The following subrules of Rule 11-6 [*Expert Reports*] apply to a tax appeal proceeding:
 - (a) subrule (1) [*requirements for report*];
 - (b) subrule (2) [*proof of qualifications*].
- (2) Unless the court otherwise orders, an expert's report must be served on every party of record, along with written notice that the report is being served under this section, by the party who intends, to tender the expert's report as evidence at the hearing.

- (3) Unless the court otherwise orders, if a party intends to tender an expert's report as evidence at the hearing to respond to an expert witness whose report is served under subsection (2), the party must serve on every party of record
 - (a) the responding report, and
 - (b) notice that the responding report is being served under this section.

Supplementary report

- 20** (1) If, after an expert's report is served under section 19 (2) or (3), the expert's opinion changes in a material way and the party who served the report intends to tender that expert's report at the hearing despite the change,
 - (a) the expert must, as soon as practicable, prepare a supplementary report and ensure that supplementary report is provided to the party, and
 - (b) the party must promptly serve that supplementary report on every other party of record.
- (2) A supplementary report under subsection (1) must
 - (a) be identified as a supplementary report,
 - (b) be signed by the expert,
 - (c) include the certification required under Rule 11-2 (2), and
 - (d) set out the change in the expert's opinion and the reason for it.

Production of documents

- 21** Unless the court otherwise orders, if a report of a party's own expert appointed under Rule 11-4 is served under this Part of this regulation, the party who served the report must,
 - (a) promptly after being asked to do so by a party of record, serve on the requesting party whichever one or more of the following has been requested:
 - (i) any written statement or statements of facts on which the expert's opinion is based;
 - (ii) a record of any independent observations made by the expert in relation to the report;
 - (iii) any data compiled by the expert in relation to the report;
 - (iv) the results of any test conducted by or for the expert, or of any inspection conducted by the expert, if the expert has relied on that test or inspection in forming the expert's opinion, and
 - (b) if asked to do so by a party of record, make available to the requesting party for review and copying the contents of the expert's file relating to the preparation of the opinion set out in the expert's report at least 60 days before the scheduled hearing date.

Notice of cross-examination to expert

- 22** The person who is required to serve the report or supplementary report of an expert under this Part must, promptly after the appointment of the expert, inform the expert

that the expert may be required to attend for cross-examination before an official reporter.

Notice of objection to expert opinion evidence

- 23** (1) A party who receives an expert report or supplementary report under this Part must, at least 30 days before the scheduled hearing date, serve on every party of record a notice of any objection to the admissibility of the expert's evidence that the party receiving the report or supplementary report intends to raise at the hearing.
- (2) Unless the court otherwise orders, if reasonable notice of an objection could have been given under subsection (1), the objection must not be permitted at the hearing if that notice was not given.

PART 5 – EXPERT OPINION EVIDENCE AT HEARING

Tendering opinion evidence at a hearing

- 24** (1) Unless the court otherwise orders, opinion evidence of an expert must not be tendered at a hearing unless
- (a) that evidence is included in a report of that expert that has been prepared and served in accordance with Part 4, and
 - (b) any supplementary reports required under section 20 have been prepared and served in accordance with that section.
- (2) Unless the court otherwise orders, the following apply to a report or supplementary report of an expert:
- (a) if, within 21 days after service of the report or within such other period as the court may order, a demand is made under section 25 that the expert who made the report attend for cross-examination conducted before an official reporter, the report must not be tendered or accepted as evidence at the hearing unless the expert is cross-examined in compliance with the demand;
 - (b) if no such demand is made under section 25 within the demand period referred to in paragraph (a) of this subsection,
 - (i) the expert whose report has been served under Part 4 need not attend for cross-examination, and
 - (ii) the report, if admissible, may be tendered and accepted as evidence at the hearing.

Cross-examination of expert

- 25** (1) If an expert was appointed by a party under Rule 11-4 and that expert's report has been served on the parties of record under Part 4 of this regulation, any party of record who is adverse in interest to the party who appointed that expert may, within the demand period referred to in section 24 (2) (a) of this regulation, demand the attendance of the expert for cross-examination under this Part conducted before an official reporter.
- (2) If an expert has been required to attend for cross-examination under this Part before an official reporter by a demand under subsection (1) and the court is of

the opinion that the cross-examination was not of assistance, the court may order the party who demanded the attendance of the expert to pay to the other party or to the expert costs in an amount the court considers appropriate.

Conduct of cross-examination of expert before official reporter

- 26**
- (1) A cross-examination under this Part is an oral examination on oath.
 - (2) A cross-examination under this Part must be conducted before an official reporter who is empowered to administer the oath.
 - (3) An expert to be cross-examined under this Part before an official reporter must attend and submit to cross-examination if the party wishing to conduct that cross-examination has complied with section 25 (1).
 - (4) If an expert under cross-examination under this Part objects to answering a question put to them, the question and the objection must be taken down by the official reporter and the court may
 - (a) decide the validity of the objection, and
 - (b) order the expert to submit to further examination and set a maximum duration for that further examination.
 - (5) A cross-examination under this Part is to be taken down in the form of question and answer, and copies of the transcript may be obtained on payment of the proper fee by
 - (a) any party of record,
 - (b) the expert cross-examined, or
 - (c) any other person as the court for special reason may permit.

Affidavit of expert

- 27** Unless the court otherwise orders, if a party appoints an expert under Rule 11-4 and the expert's report has been served in accordance with Part 4 of this regulation, the party may file an affidavit of the expert that the party believes is necessary to clarify terminology in the report or to otherwise make the report more understandable and the contents of the affidavit of that expert is limited to those matters.

Transcript of cross-examination of expert

- 28**
- (1) If a transcript of a cross-examination under this Part is certified as an accurate transcription by the official reporter, the transcript may be tendered in evidence without proof of the reporter's signature.
 - (2) Unless the court otherwise orders, the party conducting the cross-examination under this Part before an official reporter is responsible for payment of the costs of providing a transcript of the cross-examination to the court.

When court may dispense with requirement of this Part

- 29** On application by a party, the court may allow an expert to provide evidence, on terms and conditions, if any, even though one or more requirements of Part 4 and this Part have not been complied with, if

- (a) facts have come to the knowledge of one or more of the parties and those facts could not, with due diligence, have been learned in time to be included in a report or supplementary report and served within the time required by this Part,
- (b) the non-compliance is unlikely to cause prejudice
 - (i) by reason of an inability to prepare for cross-examination, or
 - (ii) by depriving the party against whom the evidence is tendered of a reasonable opportunity to tender evidence in response, or
- (c) the interests of justice require it.

PART 6 – WRITTEN ARGUMENT

Exchange of written arguments

- 30**
- (1) Unless the court otherwise orders or with the written consent of the government, the petitioner must serve on the government the petitioner’s written argument at least 20 days before the scheduled hearing date.
 - (2) Unless the court otherwise orders or with the written consent of the petitioner, the government must serve on the petitioner the government’s written argument at least 10 days before the scheduled hearing date.
 - (3) Unless the court otherwise orders or with the written consent of the government, the petitioner must serve on the government the petitioner’s reply written argument at least 3 full business days before the scheduled hearing date.