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**NEWFOUNDLAND AND LABRADOR
REGULATION 19/03**

Mining and Mineral Rights Tax Regulations, 2003
under the
Mining and Mineral Rights Tax Act, 2002
(O.C. 2003-058)

(Filed February 28, 2003)

Under the authority of section 45 of the *Mining and Mineral Rights Tax Act, 2002*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, February 19, 2003.

Deborah E. Fry
Clerk of the Executive Council

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Short title

1. These regulations may be cited as the *Mining and Mineral Rights Tax Regulations, 2003*.

Definitions

2. In these regulations

(a) "Act" means the *Mining and Mineral Rights Tax Act, 2002*;

(b) "capital cost", with respect to an asset, means

(i) the cost of the acquisition, construction or improvement of that asset, excluding interest charges and less government assistance pertaining to that asset, and

(ii) costs incurred to withdraw an asset from use or service and place it in protective storage or to keep it in reserve for future use;

(c) "class 1 asset" means a processing or smelting asset;

(d) "class 2 asset" means a mining asset that is not a class 3 asset;

(e) "class 3 asset" means a mining asset acquired for and used in a new mining operation or a major expansion project;

(f) "major expansion project" means a project designated by the minister as a major expansion project under subsection 3(5);

(g) "mining asset" means an asset used in mining operations;

(h) "new mining operation" means a mining operation designated as a new mining operation by the minister under subsection 3(3);

(i) "processing" means beneficiation, that is not mining or smelting, of mineral ores extracted from land on or under which there are mining operations within the province;

(j) "processing assets" means plant, machinery, equipment or structures acquired for the purpose of and utilized in processing;

(k) "smelting" means the separation of metallic constituents from mineral ores or concentrates extracted from land on or under which there are mining operations within the province, through the use of pyrometallurgical or hydrometallurgical methods, or to reduce metals extracted from land on or under which there are mining operations within the province to a highly pure state through the use of electrolytic methods; and

(l) "smelting assets" means plants, machinery, equipment and structures acquired for the purpose of and utilized in smelting.

Application and designation

3. (1) An operator may apply to the minister to have

(a) a mining operation designated as a new mining operation; or

(b) an expansion of a mining operation designated as a major expansion project.

(2) An application under subsection (1) shall contain the information that the minister may require.

(3) A mining operation may be designated by the minister as a new mining operation where the mine is

(a) a new mine; or

(b) a re-opened mine which has been closed for a continuous period of at least 60 months.

(4) A new mining operation ceases to be a new mining operation when the mining operation achieves commercial production.

(5) A project to expand the rate of production of a mining operation may be designated by the minister as a major expansion project where the investment in that project is designed to increase the daily rate of production by at least 30% over the average daily rate of production of the mining operation during each of the 5 fiscal years ending immediately before the calendar year in which the first outlay of capital is made with respect to that project.

(6) Where the operator fails to increase the daily rate of production referred to in subsection (5) within 3 years of incurring the first outlay of capital for the project, or by another time that the minister considers reasonable, the minister may revoke the designation.

(7) Where a designation has been revoked under subsection (6), assets that have been classified as class 3 assets shall be reclassified as class 2 assets effective from the date of their acquisition, and the minister may reassess tax payable for the fiscal years for which the designation was revoked.

Depreciation expenses

4. (1) For the purpose of determining the net income of a taxpayer under section 5 of the Act, the following depreciation expenses may be deducted from gross income:

- (a) in respect of class 1 assets, up to 25% of the undepreciated capital cost;
- (b) in respect of class 2 assets, up to 25% of the undepreciated capital cost; and
- (c) in respect of class 3 assets, up to 100% of the undepreciated capital cost.

(2) For the purpose of subsection (1), "undepreciated capital cost" means, in respect of a class of assets, for a fiscal year,

- (a) the undepreciated capital cost of all assets in that class in the previous year less depreciation expenses claimed in that year, less
- (b) the proceeds from disposal of assets in that class, plus
- (c) 50% of the capital cost of all assets in that class acquired in the previous year, plus
- (d) 50% of the capital cost of all assets in that class acquired in the current year.

(3) Where the amount of the proceeds from the disposal of assets in paragraph (2)(b) exceeds the sum of the sum of the amounts referred to in paragraphs (2)(a), (c) and (d), the excess shall be included in gross revenue, and the undepreciated capital cost shall be zero.

(4) Where the fiscal year of an operator is less than 12 months, the depreciation expense under subsection (1) shall be reduced by the number of days in the fiscal year divided by 365.

(5) Where a mining operation ceases to be a new mining operation, or a major expansion project, the class 3 assets shall be reclassified as class 2 assets.

Processing allowance

5. For the purpose of subsection 5(3) of the Act, an operator may deduct an amount by way of return on capital directly and necessarily employed by the taxpayer in processing equal to

- (a) 8% of the original cost of processing assets permanently located in the province, exclusive of interest or financing charges; and
- (b) 15% of the original cost of smelting assets permanently located in the province, exclusive of interest or financing charges.

Application of Quarry Materials Act, 1998

6. Where a person is subject to the *Quarry Materials Act, 1998* and is liable to pay royalties under that Act, that person is exempt from the payment of all taxes imposed by this Act in respect of those quarry materials.

Tax returns

7. (1) An operator shall file an annual tax return in the form prescribed by the minister.

(2) A person who receives or is due a payment described under subsection 8(1) of the Act shall file an annual return in the form prescribed by the minister.

(3) A return required under subsection (1) or (2) shall be filed with the minister not later than 3 months after the close of the year for which the return is made, together with payment of the tax payable.

(4) A person who withholds tax under section 9 of the Act shall file a return together with payment of the tax payable in a form required by the minister not later than the end of the month following the month in which the payment was made.

(5) In addition to or instead of a return required under this section, the minister may order a person to file a return in the form, for the period and within the time that the minister may specify, and that person shall file the return together with the tax payable for the period in respect of which the return is made.

Interest on sum due

8. (1) Interest shall be levied upon a sum due to the Crown under the Act and these regulations at the annual rate of 1.2% compounded each month or part of a month from the date the sum is required to be paid to the date of payment.

(2) Interest shall not be levied for a month in which the sum due is less than \$100.

Refund of overpayment

9. (1) Where a person has paid to the Crown an amount which exceeds the amount required to be paid, that person may apply in writing to the minister for a refund of the overpayment.

(2) An application for a refund shall be supported by the relevant facts, documentation or information that the minister may request.

(3) Upon verification of an application for a refund, the minister shall pay the verified amount of overpayment to the person to whom the refund is due.

(4) A refund shall not be paid under this section where the amount of the refund is less than \$10.

Interest on refund

10. (1) Where the minister issues a refund under section 9, he or she shall at the same time pay interest on the amount of the refund at the rate of 0.7% compounded each month from the date the application is received to the date the refund is approved.

(2) Where the minister issues a refund of tax resulting from a review or appeal of an assessment, interest shall be paid to the taxpayer at the rate specified in subsection (1) from the date that the assessment or part of the assessment was paid to the date the refund is approved.

(3) Interest shall not be paid under this section where the amount of the refund is less than \$100.

Repeal

11. The *Mining and Mineral Rights Tax Regulations, 1998*, Newfoundland and Labrador Regulation 30/98, are repealed.