

Legal Services Provided to British Columbians with a Household Net Income below Certain Thresholds

Questions and Answers

Q. Does the tax relief apply to companies as well as individuals?

A. The government's interpretation of the decision is that the tax relief on legal services applies only to individuals whose household net income falls at or below the Thresholds. Lawyers and notary publics are still required to collect tax on legal services provided to corporations.

Q. What documentation must be reviewed and retained to prove that a client's household net income falls at or below the Thresholds and the legal services provided relate to the determination of rights and obligations by courts of law or independent administrative tribunals?

A. A Statutory Declaration that reflects the information required to assess household net income and the type of legal services provided should be used in all cases. **A sample Statutory Declaration that meets the requirements is available on this website.** The documentation that should be collected to support household net income includes income tax returns, T4 slips, pay stubs, or similar evidence from all members of a household. The documentation of household net income should become Exhibit "A" to the Statutory Declaration. If the client is unable to provide the documentation the declaration should explain why it is not available.

If a client is **unwilling** to provide verification of household net income, you must collect the tax and advise your client to apply for a refund from the Ministry of Small Business and Revenue.

Q. Do I have to go back to get clients that I have already billed and not collected tax from to sign a Statutory Declaration?

A. If you no longer provide services to that client, and the bill was a final bill, you are only required to retain the documentation that you collected to justify the non-collection of tax. If you have provided or will be providing legal services for which you will be billing a client, then the client must sign a Statutory Declaration.

Q. What documentation will provincial auditors accept as evidence that a client's household net income falls at or below the Thresholds? Is a separate file containing copies of the Statutory Declarations sufficient?

A. During an audit, ministry staff will ask to see the bill and the Statutory Declaration with supporting documentation for clients to verify that no tax was payable. A separate file is acceptable.

Q. What time frame should be considered in determining household net income?

A. In cases where household net income is generally derived from steady employment or the client is unemployed, current monthly household net income can be used. In cases where monthly household net income fluctuates because a client or member of the household is self employed or seasonally employed, an average annual household net income for the previous 12-month period should be used to calculate an average monthly household net income.

Q. When is the appropriate time for determining the client's household net income to see if it falls at or below the Thresholds? Must I monitor a client's household net income?

A. A lawyer will be required to assess income and have the client complete the Statutory Declaration on or before the time an initial invoice is rendered, provided that the billing is made in the normal course of business under usual terms. In the event that a client's household net income changes materially, the client will be responsible for informing the lawyer about the change in circumstances as set out in the Statutory Declaration.

Q. When should I assess the client's household net income – when I do the work for them or at the time I render the bill?

A. You should assess the client's income level at or before the time you render the bill, provided that the billing is made in the normal course of business under usual terms.

Q. Should a court award be considered part of household net income?

A. Household net income for the purpose of determining whether tax must be collected on legal services includes any court award. Tax must be paid on contingency fees if the award results in household net income that does not fall at or below the Thresholds.

Q. Financial information is private and many clients will refuse to allow the disclosure of their private financial information during an audit, as solicitor client privilege protects the information.

A. During an audit ministry staff will ask to see the bill and the Statutory Declaration with supporting documentation to verify that no tax was payable. This information is used solely for the purpose of the audit, and is protected by law from any disclosure for any other purpose. If client solicitor privilege is claimed, then regulation 8.8 to the Act applies. This regulation outlines what steps must be taken for such records.

Q. Should I charge tax on legal services provided to a group of individuals for which I render a single bill?

A. If the group you represent is not a single household whose household net income falls at or below the Thresholds, tax must be collected on the legal services provided.

Q. How can I assess income in a family dispute if I act for a member of that family where proof of income for the spouse is not available?

A. It is household net income that has to be assessed. If the family members are not sharing a household, you may use just your client's household net income information. If both people are in one household and the client is unable to obtain the other party's information, the client may use the Statutory Declaration to swear to approximate household net income level.

Q. Do I have to assess income when I provide a fee estimate for clients before I work for them?

A. You can provide a fee estimate and separate the tax component. Please explain to your client what the criteria are for legal services without payment of tax. If you are hired, you must complete an income assessment to determine whether or not tax must be collected.

Q. Must I assess income in order to not charge tax for small services such as notarizing a document?

A. Yes. In order to provide legal services without charging tax, the client's household net income must be determined.

Q. In Madam Justice Koenigsberg's Reasons for Judgement in the decision of February 8, 2005, it stated that the level of low income for the purpose of determining whether tax should be collected on legal services is the level of income and assets which exist for the Family Duty Counsel Program of the Legal Services Society under the Legal Services Society Act. What asset test should be used?

A. There is no asset test associated with the Family Duty Counsel Program, therefore there is no requirement to assess assets, just household net income.

Q. Must the parents' income be considered in calculating household net income for legal services provided to a minor?

A. An economic family or household is considered to be a group of two or more persons who live in the same dwelling and are related to each other by blood, marriage, common law or adoption. An unattached individual is a person living either alone or with others to whom he or she is unrelated, such as roommates or a lodger.

In her decision, Madam Justice Koenigsberg ruled that people with a net annual household income below a threshold established for the Family Duty Counsel Program under the Legal Services Society Act do not have to pay tax on legal services. Therefore, in the case of the minor, if the parents and minor reside in a single household, net income from all members of the household must be taken into consideration in determining if tax applies.

If the minor is not residing with the parents but is in foster care, and is therefore an unattached individual, only the net income of the minor must be considered. However, if the amount of the award or settlement brings the minor's household net income above the thresholds referred to in the decision, tax must be collected on the legal services provided to the minor.

Q: Must adult children's income must be considered part of household net income where an elderly parent who receives legal services is living in the same household.

A. Elderly parents living with adult children are related either by blood or adoption and therefore constitute a household. Net income from all members of the household must be taken into consideration in determining if tax applies to legal services provided to any member of that household.

Q. Does the PST exemption for low income clients apply to estates and trusts?

A. The government's interpretation of the decision is that the tax relief on legal services applies only to individuals whose household net income falls at or below the thresholds referred to in the decision. Estates and trusts are not individuals; therefore, tax applies to both.