POLICY PURPOSE

This policy describes how the worker's net average earnings are calculated.

Workers who have accidents after December 31, 1991, will receive wage loss benefits or their survivors' benefits based on a percentage of the worker's net average earnings. Net average earnings are calculated in a two step process.

First, the Workers Compensation Board (WCB) determines the worker's average earnings before the accident. That process is described in policy 44.80.10.10, *Average Earnings*, or policy 44.80.10.10.01, *Average Earnings*. From those average earnings, the WCB calculates amounts representing probable deductions for income tax payable, Canada Pension Plan (CPP) contributions, Employment Insurance (EI) premiums and other deductions as the Board of Directors may establish by regulation. Those amounts are deducted from "average earnings" to arrive at the worker's "net average earnings." The probable deductions that may be used in calculating a worker's net average earnings are described in this policy.

A. POLICY

This policy applies to decisions on net average earnings for accidents from January 1, 1992, to December 31, 2000.

NET AVERAGE EARNINGS

(i) Relationship to Average Earnings

1. The WCB determines a worker's net average earnings by deducting from the worker's average earnings the probable deductions for the following:
   - income tax payable by the worker;
   - Canada Pension Plan contributions payable by the worker;
   - Employment Insurance premiums payable by the worker; and
   - other deductions the Board of Directors may establish by regulation.

2. Net average earnings are recalculated whenever the worker's average earnings change.

(ii) Probable Deductions from Average Earnings

1. Probable deductions for CPP contributions and EI premiums are based on requirements of the *Canada Pension Plan Act* and the *Employment Insurance Act*.

2. When determining probable amounts, the WCB considers the contribution levels required under those *Acts*. Workers who are not required to pay CPP contributions or EI premiums do not have these probable contributions or premiums deducted.

3. Probable deductions for income tax are based on the worker's average earnings and the tax credits that the WCB allows. Workers who are not required to pay income tax do not have probable income tax deducted.

4. The worker may claim the following tax credits: basic personal amount, spouse or common-law partner amount, amount for an eligible dependant, amounts for dependent children who are under 18 at any time in the year and infirm dependants age 18 or older.

5. The WCB will only allow the tax credits outlined above if the worker qualifies to claim them under the federal and provincial *Income Tax Acts.*

   The WCB does not use the spouse or common-law partner tax credit to determine the worker's probable income tax payable when the injured worker indicates to the WCB that his or her spouse or partner is employed.

6. Tax credits that a worker may claim are initially established at the date of accident. These credits will be adjusted on the first day of the month following the second anniversary of the accident and annually thereafter.

   Subject to paragraph 6, the federal tax credit for dependent children who are under 18 at any time in the year may be claimed by workers with accidents from January 1, 1992, to December 31, 2000. However, this tax credit may only be claimed on or after July 1, 2007.

(iii) Recurrences or New Accidents

This section (iii) applies only to recurrence decisions made on or after January 1, 2006, for accidents from January 1, 1992, to December 31, 2000.

1. When a worker returns to work following an injury or illness and subsequently makes a claim which is accepted by the WCB as a "recurrence" of the original injury or illness <u>with</u> a real and substantial attachment to the labour force, the worker's net average earnings will be determined under policy 44.10.20.50.10, *Recurring Effects of Injuries or Illnesses (Recurrences)*. The worker's net average earnings at the time of the recurrence will be based on the tax credits he or she can claim at that time.

2. If the claim is accepted by the WCB as a continuing result of the original injury or illness without a real and substantial attachment to the labour force, the worker's net average earnings will be based on pre-injury net average earnings. Where applicable, the WCB will apply any adjustments for indexing to the worker's average earnings to determine the current value of these net average earnings.

3. If the claim is accepted as a "new accident", the worker's net average earnings will be based on net average earnings at the time of the accident.

   Recurrence decisions made prior to January 1, 2006 for accidents from January 1, 1992, to December 31, 2000, will be determined under Policy 44.10.20.50, *Recurring Effects of Injuries*, and Policy 44.10.20.50.01, *Recurring Effects of Injuries*.

B. REFERENCES

The Workers Compensation Act, sections 29(1)(a)(ii), 39(1), 40(1), and 40(3)

WCB Policy 44.80.10.10, *Average Earnings*
WCB Policy 44.80.10.10.01, *Average Earnings*
WCB Policy 44.80.30.10, *Establishing Post-Accident Earning Capacity*
WCB Policy 44.10.20.50.10, *Recurring Effects of Injuries or Illnesses (Recurrences)*
WCB Policy 44.10.20.50, *Recurring Effects of Injuries*
WCB Policy 44.10.20.50.01, *Recurring Effects of Injuries*

History:

1. Policy 44.80.10.40 established by Board Order 45/91 on December 17, 1991.
2. Policy amended by Board Order 20/93 on June 28, 1993, to cease effect on June 30, 1993. Re-issued to Policy Manual as 44.80.10.40.**01**
3. Policy 44.80.10.40 approved by Board Order 20/93 on June 28, 1993, to reflect amendments to the federal Income Tax Act effective July 1, 1993.
4. Policy 44.80.10.40 approved by Board Order 13/00 on April 27, 2000. Policy renamed Net Average Earnings. The major changes to the policy include the addition of tax deductions that a worker may claim and a revised method for determining net average earnings when a recurrence occurs. Effective January 1, 2001, for accidents on or after January 1, 2001. Policy reissued to Policy Manual as 44.80.10.40.01.
5. Administrative Guidelines have been revised – March 2003.
6. Bill 41 effective July 6, 2001 redefined "spouse" and added a separate definition of "common-law partner". The change in the policy adds the phrase "or common-law partner" after "spouse". Applies to all claims prior to July 6.2001. Updated July 1, 2005.
7. Policy 44.80.10.40 was amended by Board Order 28/05, on September 29, 2005, to rescind Board Order No. 13/00 effective January 1, 2006. The rescinded policy will continue to apply to net average earning decisions made on accidents from January 1, 2001 to December 31, 2005. The recurrence provisions apply to recurrences from January 1, 2001 to December 31, 2005. This policy will apply to any reconsiderations and appeals that derive from these decisions/accidents and re-

issued as 44.80.10.40.01. Policy 44.80.10.40.01 has been re-issued as 44.80.10.40.02 and will apply to decisions/accidents from July 1, 1993 to December 31, 2000.

8. Policy 44.80.10.40.02 approved by Board Order 24/07 on June 20, 2007. The application of the policy is dependent on decision and accident dates. Effective July 1, 2007, the Board of Directors approved the WCB's practice to use the dependent child tax credit in the calculation of a worker's probable income tax payable.
9. Policy 44.80.10.40.02 approved by Board Order 32/07 on October 30, 2007. The application of the policy is dependent on decision and accident dates. The policy was amended to parallel policy 44.80.10.40, wherever possible. Effective January 1, 2008, the Board of Directors approved the WCB's practice to not use the spouse or common-law partner tax credit in calculating a worker's probable income tax payable if the spouse or partner is employed. This practice was incorporated into the policy.
10. Minor formatting and grammatical changes were made to the policy June 27, 2012.