

## Income Tax

IMP. 1010-3/R2 Calculation of the Prescribed Time Limit

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Reference(s): *Taxation Act* (R.S.Q., c. I-3), section 1010  
*An Act respecting municipal taxation* (R.S.Q., c. F-2.1), section 220.8  
*An Act respecting the Québec Pension Plan* (R.S.Q., c. R-9), section 66  
*An Act respecting property tax refund* (R.S.Q., c. R-20.1), section 21

*This bulletin cancels and replaces bulletin IMP. 1010-3/R1 of September 30, 1987.*

This bulletin presents the Ministère's policy concerning the calculation of the prescribed time limit provided for in section 1010 of the *Taxation Act*.

1. Paragraphs a, a.0.1 and a.1 of subsection 2 of section 1010 of the *Taxation Act* provide that the Minister may again assess the tax, interest and penalties and reassess or make an additional assessment, as the case may be,

- (a) **within three years after the day of mailing** of an original assessment or of a notification that no tax is payable for a taxation year;
- (a.0.1) **within four years after the day contemplated in paragraph a** if, at the end of the taxation year concerned, the taxpayer is a mutual fund trust or a corporation other than a Canadian controlled private corporation; and
- (a.1) **within six years after the day contemplated in paragraph a** or, in the case of a taxpayer referred to in paragraph a.0.1, **within seven years after that day**, where a reassessment of the taxpayer's tax by the Minister is required in accordance with section 1012 of the *Taxation Act* or, but for the expiration of the time limit prescribed in paragraph a, as a consequence of an additional payment of any income or profits tax to, or a reimbursement of any such tax by, the government of a foreign country, or a prescribed international organization.

2. The **day of mailing** mentioned in the preceding article is, in the absence of proof to the contrary, deemed to be the **day whose date is indicated in the notice of assessment**.

Section 87 of the *Act respecting the Ministère du Revenu* provides that for the purposes of a fiscal law, the date of mailing of a notice of assessment or of a notice attesting that no duty is payable is deemed, in the absence of any proof to the contrary, to be the date indicated in such notice.

3. For the purposes of calculating the time limit provided for in section 1010, the following rules must be observed:

- 3.1 the day marking the beginning of the time limit is not counted;
- 3.2 the day marking the end of the time limit is counted; the time limit expires when the last day of the term has ended;
- 3.3 in calculating a time limit, the fact that months are not all equal or that leap years are longer than ordinary years is not taken into account; thus, “month” means a calendar month (*Interpretation Act*, (R.S.Q., c. I-16, s. 61, par. 24) and “year” means a calendar year;
- 3.4 holidays are counted;
- 3.5 however, if the time limit fixed expires on a non-judicial day, such time limit is extended until the next following judicial day (*Interpretation Act*, section 52);
- 3.6 “holiday” means:
  - (a) Sundays;
  - (b) 1 January;
  - (c) Good Friday;
  - (d) Easter Monday;
  - (e) June 24, the National Holiday;
  - (f) 1 July, the anniversary of Confederation, or 2 July when 1 July is a Sunday;
  - (g) the first Monday of September, Labour Day;
  - (h) the second Monday of October;
  - (i) 25 December;
  - (j) the day fixed by proclamation of the Governor-General for the celebration of the birthday of the Sovereign;
  - (k) any other day fixed by proclamation of the Government as a public holiday or as a day of thanksgiving; (*Interpretation Act*, s. 61, par. 23)
- 3.7 Saturday is not a holiday.

#### 4. Example 1: Taxation Year 1990

For the purposes of this example, let's suppose that the original notice of assessment is dated June 16, 1991 and that it is mailed on the same date. The prescribed time limit is calculated as follows:

June 16, 1991:	the day on which the prescribed time limit starts; it is not counted;
June 17, 1991:	the first day counted;
June 16, 1994:	the last day of the prescribed time limit; it is counted in its entirety;
June 17, 1994:	the taxpayer acquires prescription from midnight, i.e. from 0 hour on June 17, 1994 (Friday).

Hence, the Ministère has until day's end on June 16, 1994, i.e. just before midnight, to issue a notice of reassessment or make an additional assessment.

#### 5. Example 2: Taxation Year 1990

What happens if the last day of the prescribed time limit is a **Saturday**?

Let's assume the following facts: the original notice of assessment is dated June 18, 1991 and is mailed on the same date; the notice of reassessment is dated June 17, 1994 (Friday).

June 18, 1991:	the day on which the prescribed time limit starts; it is not counted;
June 19, 1991:	the first day counted;
June 18, 1994:	the last day of the prescribed time limit for acting (Saturday); it is counted in its entirety;
June 19, 1994:	the taxpayer acquires prescription from midnight, i.e. from 0 hour on June 19, 1994 (Sunday).

In this situation, the Ministère must act in the juridical days preceding the ultimate date, since the last day falls on a Saturday and Saturday is not a holiday within the meaning of section 52 of the *Interpretation Act*

What happens though if the notice of reassessment of June 17, 1994 (Friday) is mailed on June 20, 1994 (Monday)?

The Ministère still acted within the prescribed time limit because of the presumption provided for in section 87 of the *Act respecting the Ministère du Revenu*. However, the taxpayer can defeat this presumption by adducing evidence that the Ministère mailed the notice of assessment on a date later than that which is indicated in the notice. This is done by means of the stamped envelope containing the notice of assessment. In such a case, the taxpayer will really have acquired prescription. Consequently, this situation may be avoided by making sure that the date on the notice of assessment is the same as the date on the envelope, i.e. by mailing the notice of assessment no later than June 17, 1994 (Friday).

#### 6. Example 3: Taxation Year 1990

What happens if the last day of the prescribed time limit falls on a **Sunday** or on another holiday?

Let's assume the following facts: the original notice of assessment is dated June 19, 1991 and is mailed on the same date; the notice of reassessment is dated June 17, 1994 (Friday).

June 19, 1991:	the day on which the prescribed time limit starts; it is not counted;
June 20, 1991:	the first day counted;
June 19, 1994:	theoretically, the last day of the prescribed time limit for acting (Sunday); however, since it is a holiday, the time limit is extended until the next juridical day, i.e. Monday June 20, 1994;
June 20, 1994:	the last day of the prescribed time limit for acting (Monday); it is counted in its entirety;
June 21, 1994:	the taxpayer acquires prescription from midnight, i.e. from 0 hour on June 21, 1994 (Tuesday).

Hence, the Ministère has until day's end on June 20, 1994, (Monday) to issue a notice of reassessment or make an additional assessment since, within the meaning of section 52 of the *Interpretation Act*, if the time limit fixed expires on a non-judicial day, the time limit is extended until the next following juridical day.

What happens though if the notice of reassessment of June 17, 1994 (Friday) is mailed on June 20, 1994 (Monday)?

In this situation, the presumption of section 87 of the *Act respecting the Ministère du Revenu* does not have to be applied since the Ministère had until June 20, 1994 (Monday) to act, i.e. the date on which the notice of reassessment was actually mailed.

However, were the notice of reassessment to be mailed on June 21, 1994 (Tuesday), the taxpayer could attempt to overthrow the presumption provided for in section 87 of the *Act respecting the Ministère du Revenu*, by adducing the evidence mentioned in article 5 above.

7. It should be noted that these principles for calculating the time limit also apply to the limits provided for in sections 220.8 of the *Act respecting municipal taxation*, 66 of the *Act respecting the Québec Pension Plan*; and 21 of the *Act respecting real estate tax refund*.

8. For the purposes of this bulletin, the statutory time limit is four years and seven years for taxation years before taxation year 1983, instead of "three years" and "six years" as stated in article 1 above.

9. This bulletin has effect both for the past and the future.