

Income Tax

IMP. 520.1-1/R1 Disposition of Property to a Taxable Canadian Corporation: Due Date for Filing the Prescribed Form and Penalties

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Reference(s): *Taxation Act* (CQLR, c. I-3), sections 1, 518, 520.1, 520.2, 522 and 1000

This version of interpretation bulletin IMP. 520.1-1 supersedes that of May 31, 2001. The bulletin was revised to ensure that it is relevant and up to date. The interpretation remains valid. Editorial revisions and changes in respect of conformity were made to ensure technical accuracy.

This bulletin sets out Revenu Québec's policy concerning the filing-due date that must be met where section 518 or 522 of the *Taxation Act* (TA) applies to a disposition of property made after March 25, 1997, as well as where an application to the Minister or a rollover application is made.

APPLICATION OF THE ACT

1. The rules provided for in sections 518 to 533 of the TA allow a taxpayer¹ (hereinafter the "Transferor") to defer or limit tax at the time of the transfer of property to a taxable Canadian corporation² (hereinafter the "Corporation").

2. Section 518 of the TA provides that the rules for tax-deferred transfers apply where a Transferor disposes of any of the Transferor's property to a Corporation for consideration that includes a share of the capital stock of the Corporation and where a valid election is made for the purposes of subsection 85(1) of the ITA. These rules generally provide that an election made for the purposes of the ITA is deemed to have been made for the purposes of the TA. For further information, see the current version of interpretation bulletin IMP. 521.2-1.

¹ This interpretation bulletin also applies, with the necessary adjustments, to partnerships that make a valid election for the purposes of subsection 85(2) of the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) (ITA) in respect of a disposition of property to a taxable Canadian corporation for consideration that includes a share of the capital stock of the corporation, in accordance with section 529 of the TA.

² This bulletin also applies, with the necessary adjustments provided for in the second paragraph of section 614 of the TA, to a Canadian partnership that acquires from a taxpayer (the Transferor) a property referred to in that paragraph. The Transferor and all the members of the partnership must make a valid election in order for the provisions of subsection 97(2) of the ITA to apply in respect of the acquisition of the property.

3. In accordance with the third paragraph of section 522 of the TA, Revenu Québec may grant an application to the Minister made jointly by the Transferor and the Corporation, thereby allowing them to

- a) agree on an amount that differs from the amount agreed on for federal income tax purposes, where the election made by the Transferor and the Corporation is the first election mentioned in section 518 of the TA;
- b) consider that no amount was agreed on, where the election made by the Transferor and the Corporation is the first election mentioned in section 518 of the TA;
- c) agree on a new amount in respect of the property.

4. Finally, where no rollover election can be made under subsection 85(1) of the ITA because subsection 13(21.2) of the ITA applies, the Transferor and the Corporation may choose to apply the tax-deferred transfer rules in Québec by completing the prescribed form provided for under section 520.1 of the TA.

5. The current version of interpretation bulletin IMP. 522-1, *Disposition of Property to a Taxable Canadian Corporation : Separate Elections, Applications to the Minister and Rollover Applications*, can be referred to for Revenu Québec's interpretation of the legislative provisions relating to these matters.

TIME LIMIT FOR FILING THE REQUIRED DOCUMENTS

6. The prescribed form (form TP-518-V) and a copy of every document sent to the Canada Revenue Agency in respect of the disposition (unless the application is either made under the third paragraph of section 522 of the TA, in which case copies of the documents required by the Canada Revenue Agency will have already been sent with an earlier form TP-518-V, or is a rollover application) must be sent to Revenu Québec no later than the later of the following dates:

- the earliest of the filing-due dates, as provided for under sections 1 and 1000 of the TA, for the persons having made the election referred to in section 518 of the TA in respect of the disposition, for the taxation year in which the disposition was made;
- the date of the last day of the two-month period following the end of the taxation year that, of the taxation years of the persons that made the election, ends the latest.

7. The Transferor and the Corporation may, on or before the end of the three-year period that follows the later of the dates referred to in point 6, or a longer period allowed by the Minister, make an application to the Minister under the third paragraph of section 522 of the TA in order to agree on an amount or a new amount, or to cancel an amount in respect of the transferred property; however, where such an application is made, a penalty applies.

PENALTIES

8. The Transferor, solidarily with the Corporation, incurs a penalty where the prescribed form (form TP-518-V) or, as applicable, a copy of every document sent to the Canada Revenue Agency, is

sent to Revenu Québec after the time limit. A penalty is also incurred where Revenu Québec grants the application made to the Minister in respect of the disposition, under the third paragraph of section 522 of the TA, where the time limit for sending form TP-518-V has expired.

9. Under section 520.1 of the TA, the penalty is equal to the lesser of the results obtained using the following two formulas:

- $[0.25\% \times (A - B)] \times C$
- $\$100 \times C$

where

A represents the fair market value of the property at the time of disposition;

B represents the proceeds of disposition of the property (amount agreed on under section 521.2 or 522 of the TA, as applicable);

C represents the number of months or part of a month beginning on the date on which the time limit for sending the prescribed form (form TP-518-V) or any other required document expired, and ending on the day on which that form or that document is sent; a month corresponds to the period between the day of the month on or before which the prescribed form must be sent and the same day in the following month.

10. In accordance with section 520.2 of the TA, Revenu Québec may, as applicable, issue a notice of assessment determining the amount of the penalty provided for under the third paragraph of section 520.1 of the TA that is payable by the Transferor. It should be noted that the Corporation is solidarily liable for the payment of the penalty incurred by the Transferor and in the case of default by the Transferor, the Corporation may be liable for the payment of the penalty.

Maximum amount of the penalty

11. The penalty described in point 8 of this bulletin cannot be greater than the lesser of the following amounts:

- \$5,000;
- the greater of
 - the penalty incurred in respect of the disposition to which section 518 of the TA applies, and
 - the penalty incurred in respect of the disposition to which the third paragraph of section 522 of the TA applies.

12. Thus, where the parties to the transfer incurred the penalty for late filing of the prescribed form (form TP-518-V) and also incur the penalty for a subsequent application to the Minister that is granted by Revenu Québec, only the greater of these two penalties must be paid, up to an amount of \$5,000. In the case of an application made under the third paragraph of section 522 of the TA, the penalty does not apply in respect of any other similar application made previously in respect of the disposition.

Example

13. On June 1, 2006, a non-depreciable capital property was disposed of to a taxable Canadian corporation by an individual who was not carrying on a business. The Corporation's taxation year ended on March 31 and the Transferor's taxation year ended on December 31. A valid election was made under subsection 85(1) of the ITA. The fair market value of the property was \$100,000 and the amount agreed on at the time of the disposition of the property was \$50,000. The prescribed form (form TP-518-V) and a copy of the documents sent to the Canada Revenue Agency were sent to Revenu Québec on March 10, 2008. No election was made under the third paragraph of section 522 of the TA.

In this case, the time limit for sending the documents was May 31, 2007, determined as follows:

- the date corresponding to the later of the following dates:
 - the earliest of the due dates for filing a fiscal return that apply to the Transferor and the Corporation for the taxation year in which the disposition was made, that is, April 30, 2007:

	Taxation year	Filing-due date	Date retained
Transferor	December 31, 2006	April 30, 2007	
Corporation	March 31, 2007	September 30, 2007	April 30, 2007

- the date of the last day of the two-month period following the end of the taxation year that, of the taxation years of the persons having made the election, ends the latest, that is, May 31, 2007:

	Taxation year	Taxation year retained	Date retained
Transferor	December 31, 2006		
Corporation	March 31, 2007	March 31, 2007	May 31, 2007

A period of 10 months, that is, from June 2007 to February 2008 inclusive (9 months) plus one month for the part of the month of March 2008 that ended on March 10, 2008, is therefore subject to the determination of a penalty.

The penalty is calculated in the following manner:

The lesser of

- $[0.25\% \times (\$100,000 - \$50,000)]$ per month \times 10 months = \$1,250
- $\$100 \times$ 10 months = \$1,000

Maximum (4th par. of s. 520.1 TA): \$5,000

AMOUNT OF THE PENALTY PAYABLE: \$1,000.