REVENU QUÉBEC

INTERPRETATION AND ADMINISTRATIVE BULLETIN CONCERNING THE LAWS AND REGULATIONS

Income Tax

IMP. 996-3/R1 **Syndicate of co-owners**
Date of publication: **June 29, 2006**

Reference(s): *Taxation Act* (R.S.Q., c. I-3), ss. 1, 1.7, 12, 22, 981, 986, 996, 997.1, 999.1 and 1000

This bulletin supersedes bulletin IMP. 996-3, dated August 31, 2001.

This bulletin states the position of the Ministère du Revenu du Québec concerning the fiscal status of a syndicate of co-owners.

APPLICATION OF THE ACT

1. Article 1039 of the *Civil Code of Québec* (S.Q., 1991, c. 64, hereinafer the "CCQ") provides that, as a body, the co-owners of an immovable held in divided co-ownership constitute a legal person called a "syndicate of co-owners," the objects of which are to preserve the immovable belonging to the co-owners, to maintain and manage the common portions, to protect the rights appurtenant to the immovable or the co-ownership, and to take all measures of common interest.

2. Section 1.7 of the *Taxation Act* (TA) provides that, for the purposes of the TA and its regulations, a legal person, whether or not established for pecuniary gain, is designated by the word "corporation".

3. Under section 22 of the TA, a corporation having an establishment in Québec at any time in a taxation year is subject to Québec tax.

4. Section 12 of the TA states that an establishment of a taxpayer is, among other things, a fixed place where the taxpayer carries on the taxpayer's business or, if there is no such place, the taxpayer's principal place of business.

5. Under section 1 of the TA, a business includes, among other things, an undertaking of any kind whatsoever. A syndicate of co-owners carries on a business for the purposes of the TA.

6. A syndicate of co-owners has an establishment in the immovable it administers because that immovable constitutes a fixed place where the syndicate carries on its business. When the establishment is in Québec, the syndicate of co-owners is subject to Québec tax under section 22 of the TA.

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7. A syndicate of co-owners may be exempt from tax if it meets the requirements under section 996 of the TA. It must have been established and be operated exclusively for non-profit purposes.

8. Given its objects, referred to in article 1039 of the CCQ, a syndicate of co-owners will generally be considered to have been established exclusively for non-profit purposes. However, the facts of each case must be examined to determine whether the syndicate of co-owners also has other purposes.

9. A syndicate of co-owners is not exempt from tax under section 996 of the TA unless it also meets the requirements under subsection 1 of section 986 of the TA. No part of the syndicate's income may be payable to any of the co-owners or otherwise made available for the personal benefit of any of them.

10. In this context, article 1071 of the CCQ provides for the establishment by a syndicate of co-owners of a contingency fund allocated exclusively to major repairs and the cost of replacement of common portions. Under article 1072 of the CCQ, the co-owners make contributions to the fund, which is owned by the syndicate. The use by the syndicate of co-owners of the contributions made by the co-owners to the contingency fund does not generally constitute a distribution of the syndicate's income or making the income available to the co-owners. However, expenses paid with money from the fund and the amounts accruing to the fund must be reasonable under the circumstances.

11. Under article 1109 of the CCQ, a syndicate of co-owners is liquidated according to the rules on the liquidation of legal persons. Thus, under certain circumstances, article 361 of the CCQ authorizes the liquidator to partition the syndicate's assets among the co-owners. The mere possibility of such a partition, which would only occur if the syndicate were liquidated, does not prevent a syndicate of co-owners from being exempt from tax, provided it meets the requirements under sections 986 and 996 of the TA. However, the exemption would cease to apply if, pursuant to a by-law or any other decision, all or a portion of the syndicate's income were to become payable to one or more of the co-owners or were to be made available for the personal benefit of any of them in the course of liquidation.

12. Where a corporation becomes or ceases to be exempt from tax on its taxable income, the rules set out in section 999.1 of the TA apply. For more on this subject, refer to the current version of bulletin IMP. 999.1-1.

13. Furthermore, under subsection 1 of section 1000 of the TA, a syndicate of co-owners that has an establishment in Québec must file a fiscal return for each of its taxation years. Under paragraph *a* of subsection 2 of section 1000 of the TA, the syndicate must file the return within six months from the end of the taxation year, even if it is considered a non-profit organization exempt from tax for the purposes of the TA or, if it is not exempt from tax, even if it has no tax payable for that taxation year. Under section 1 of the TA, the taxation year of a syndicate of co-owners corresponds to its fiscal period.

14. At the same time, section 997.1 of the TA provides, among other things, that a non-profit corporation exempt from tax because of section 996 of the TA must, within six months after the end

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of each of its fiscal periods and without notice or demand therefor, file with the Minister of Revenue an information return using form TP-997.1-V, if

(a) the aggregate of all amounts, each of which is a taxable dividend or an amount received or receivable by the non-profit corporation in the fiscal period in question as, on account of, in lieu of or in satisfaction of interest, rentals or royalties exceeds $10,000;

(b) at the end of the non-profit corporation's preceding fiscal period, its total assets, determined in accordance with generally accepted accounting principles, exceeded $200,000; or

(c) the non-profit corporation was required to file an information return for a preceding fiscal period.

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