

Income Tax

IMP. 1015-5/R1

Fiscal obligations of a person who employs an artist working in one of the fields of artistic endeavour covered by the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*

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Reference(s):

Taxation Act (R.S.Q., c. I-3), s. 1015
An Act respecting the Québec Pension Plan (R.S.Q., c. R-9), ss. 50, 52, 59 and 63
An Act respecting parental insurance (R.S.Q., c. A-29.011), ss. 50, 52, 60 and 62
An Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., c. R-5), s. 34
An Act respecting labour standards (R.S.Q., c. N-1.1), s. 39.0.2
An Act to foster the development of manpower training (R.S.Q., c. D-7.1), ss. 3, 14 and 15¹
Regulation respecting the Taxation Act (R.R.Q., 1981, c. I-3, r.1, as amended), ss. 1015R1 and seq. 1086R1 and seq.

This version of bulletin IMP. 1015-5 supersedes the version of June 30, 2000. The bulletin was revised to take into account the coming into force of the Act respecting parental insurance. Furthermore, the description of the persons covered by the bulletin was clarified. Finally, some changes in respect of style and conformity were made to ensure technical accuracy.

This bulletin states the position of the Ministère du Revenu du Québec concerning the fiscal obligations of a person who uses the services of an artist as host, performer or creator.

PERSONS COVERED

1. This bulletin applies to a person who uses the services of a person as a host in a variety program or performer in the following fields: the stage (including theatre, opera, music, dance and variety entertainment), multimedia, film, the recording of discs and other modes of sound recording, dubbing, and the recording of commercial advertisements. The work of a host or performer includes work done for radio, television, films or video.

¹ The title of this Act has been changed to read: *Act to promote workforce skills development and recognition*, following assent to the *Act to amend the Act to foster the development of manpower training and other legislative provisions* (S.Q. 2007, c. 3). This amendment is in force since June 8, 2007.

2. This bulletin also applies to a person who uses the services of a creative artist working in one of the fields of artistic endeavour covered by the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* (R.S.Q., c. S-32.1) and listed in section 1 of that Act. The fields are the same as those listed in point 1 above.

APPLICATION OF THE ACT

3. In order to determine the extent of the fiscal obligations of a person who uses an artist's services, it is important to determine the nature of the legal relationship between that person and the artist.

4. If the artist gives performances under a contract of employment, the employer must fulfil certain obligations under Québec fiscal legislation. This legislation requires a person acting as an employer to

- (a) withhold the prescribed amount of tax, Québec Pension Plan (QPP) contributions and Québec parental insurance plan (QPIP) premiums from the wages paid to employees and the benefits granted to them;
- (b) remit the amounts withheld to the Minister of Revenue and pay, where applicable, compensation tax, employer QPP contributions and QPIP premiums, as well as employer contributions to the financing of the Commission des normes du travail, the health services fund and the Fonds de développement et de reconnaissance des compétences de la main-d'œuvre;
- (c) file information returns concerning, in particular, the wages paid to employees and the contributions and premiums the person must pay as an employer.

5. A person who uses an artist's services may also do so under a contract of enterprise. In this case, the person is exempt from all of the obligations of an employer with regard to the amounts paid to the artist under the contract, provided the artist is resident in Canada. If the artist is not resident in Canada, all payments for services rendered in Québec by the artist are subject to the tax withholding provided for in section 1015R8 of the *Regulation respecting the Taxation Act*, and the payer must file an information return concerning the payments made to the artist.

DETERMINATION OF THE WORKER STATUS OF AN ARTIST

6. According to article 2098 of the *Civil Code of Québec*, a contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client, or to provide a service, for a price that the client binds himself to pay.

7. According to article 2085 of the *Civil Code of Québec*, a contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

8. The Ministère considers that the existence of a relationship of subordination in respect of the performance of the work undertaken by an artist is the key indicator of a contract of employment. In

this regard, the guidelines set out in the current version of bulletin RRQ. 1-1 must be used to determine the worker status of the artist.

9. However, point 8 of bulletin IMP. 80-3, *The fiscal status of an artist working in one of the fields of artistic endeavour covered by the Act respecting the professional status and conditions of engagement of performing, recording and film artists*, provides that artists referred to in the bulletin may take advantage of a presumption under which they are considered self-employed if, during a particular year, they have entered into several engagements with one or more producers in a negotiating sector and in duties defined by the Commission de reconnaissance des associations d'artistes et des associations de producteurs. If an artist uses the presumption of self-employment, the producer using the artist's services must take this into consideration in determining the artist's status.

10. For the purposes of point 9 above, where an artist resident in Canada takes advantage of the presumption of self-employment provided for in point 8 of the current version of bulletin IMP. 80-3, and indicates this explicitly to the producer, the producer has no fiscal obligation with regard to the artist. This is the case even if the Ministère subsequently rebuts this presumption because, on the one hand, the artist deducts a loss from his or her artistic activity against income from another source and, on the other hand, the facts show that the artist is an employee.

11. Furthermore, a person who uses the services of an artist who cannot take advantage of the presumption of self-employment described in bulletin IMP. 80-3 must, as an employer, fulfil the obligations described in paragraphs (a) to (c) of point 4 above, provided the facts show that the artist's performance is given under a contract of employment.