

## Income Tax

IMP. 1045-1/R3      Penalty for failure to file a tax return  
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Reference(s):      *Taxation Act* (R.S.Q., c. I-3), sections 1000, 1001, 1003, 1004, 1045 and 1045.0.1

*This bulletin supersedes bulletin IMP. 1045-1/R2 dated October 31, 1997.*

Section 1045 of the *Taxation Act* (TA) provides for a penalty to be imposed on anyone who fails to file a tax return on the prescribed form or within the prescribed time in accordance with section 1000, 1001, 1003 or 1004 of the TA.

### APPLICATION OF THE ACT

1. Subject to point 2 of this bulletin, the penalty is calculated on the tax that is unpaid on the filing-due date of the tax return being considered. The unpaid tax corresponds to the amount by which the tax payable for the particular taxation year exceeds the tax actually paid for that year by the filing-due date.
2. In the case of an individual, the penalty for failure to file a tax return is calculated on the unpaid tax, as defined in point 1 of this bulletin, reduced by the amount of any reimbursement, refund or rebate to which the individual is entitled under section 220.3 of the *Act respecting municipal taxation* (R.S.Q., c. F-2.1), section 78 of the *Act respecting the Québec Pension Plan* (R.S.Q., c. R-9), the *Act respecting property tax refund* (R.S.Q., c. R-20.1) and section 358 of the *Act respecting the Québec sales tax* (R.S.Q., c. T-0.1).
3. Where the Minister makes and issues a reassessment of a taxpayer's tax in accordance with section 1010 of the TA, the penalty calculated at the time of the original assessment must be recalculated. Similarly, if no penalty was imposed at the time of the original assessment but the evidence indicates that one is justified and the Minister decides that it should be applied, the penalty must be calculated at the time of the reassessment.
4. Where the tax payable is reassessed as a result of the carry-back of a loss sustained in a subsequent taxation year, the penalty is calculated on the tax that was unpaid on the filing-due date of the return being considered, which is to be reduced, where applicable, by the amount of any reimbursement, refund or rebate referred to in point 2 of this bulletin. The effect of the carry-back of the loss must not be taken into account, however, in calculating the penalty.

5. Under section 1045.0.1 of the TA, where the failure to file a tax return results solely from the inclusion, in calculating an individual's income for a particular taxation year, of an amount further to the disposition, in a subsequent taxation year, of a work of art referred to in section 752.0.10.11.1 of the TA by a donee referred to in that section, and the designation of an amount under section 752.0.10.13 of the TA for the particular taxation year, the amount of unpaid tax at the time when the return must be filed is the amount that is unpaid on the date by which the individual is required to file a tax return (or would be required to file a tax return if tax were payable under Part I of the TA by the individual) for the subsequent taxation year in which the disposition occurred.

6. The penalty is equal to 5% of the tax that is unpaid on the filing-due date plus 1% of the tax that is unpaid on that date for each full month the return is late, to a maximum of 12 months.

7. Finally, as provided in other parts of the TA and other tax legislation, section 1045 of the TA is applicable, with the necessary modifications, to matters covered by those provisions. These matters include the late filing of returns for tax on capital or for contributions to the Québec Pension Plan, the health insurance fund or the prescription drug insurance fund.