

## Income Tax

IMP. 232-2/R1      Deduction for gifts of property classified as “cultural property” claimed by a corporation that disposed of such property by gift

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Reference(s):      *Taxation Act* (CQLR, c. I-3), ss. 1, 7.21, 7.22, 232, 255, 288, 422, 710, 710.1, 710.2, 710.4, 710.5, 711, 712, 712.0.0.1 and 712.0.1  
*Regulation respecting the Taxation Act* (CQLR, c. I-3, r. 1), ss. 712R1, 712R2, 712R4, 712R5 and 712.0.0.1R1

*This version of interpretation bulletin IMP. 232-2 supersedes the version of March 29, 1996. The bulletin was revised to explain the rules that apply in the case of a recognized gift with reserve of usufruct or use, to the extent that such a gift is made after July 11, 2002, and to take into account, further to the coming into force of chapter 5 of the statutes of 2009, the addition of Chapter I.1 to Title II of Book I of Part I of the Taxation Act, which provides new rules relating to gifts. Furthermore, some changes were made in respect of style and conformity to ensure technical accuracy.*

This bulletin sets out the views of the Ministère du Revenu du Québec concerning the disposition of cultural property by a corporation. It also deals with the conditions that a corporation must meet to claim the deduction for gifts of cultural property in computing its taxable income.

### DEFINITION

1. By virtue of the third paragraph of section 232 of the *Taxation Act* (TA), a “cultural property” means any of the following properties:

- (a) a property that complies with the criteria of significance and importance set out in subsection 3 of section 29 of the Cultural Property Export and Import Act (R.S.C. 1985, c. C-51), as determined by the Canadian Cultural Property Export Review Board (hereinafter “Canadian cultural property”), and that has been disposed of to an institution or a public authority in Canada that is, at the time of disposition, designated under subsection 2 of section 32 of that Act for general purposes or for a specified purpose related to that property;
- (b) a property that, at the time of disposition, is recognized in accordance with section 16 of the *Cultural Property Act* (CQLR, chapter B-4) or classified in accordance with sections 24 to 29

of that Act (hereinafter “Québec cultural property”), and that has been disposed of to an institution or a public authority referred to in paragraph (a) above; and

- (c) a property that is the subject of a certificate issued by the Commission des biens culturels du Québec to the effect that it was acquired by a museum established under the *Act respecting the Montréal Museum of Fine Arts* (CQLR, chapter M-42) or the *National Museums Act* (CQLR, chapter M-44), a certified archival centre or a recognized museum in accordance with its acquisition and conservation policy and the directives of the Ministère de la Culture et des Communications<sup>1</sup>(hereinafter “recognized cultural property”).

## **APPLICATION OF THE ACT**

### **GAIN OR LOSS RESULTING FROM THE DISPOSITION OF CULTURAL PROPERTY BY GIFT**

2. In accordance with the general rule provided for in paragraph c of section 422 of the TA, the disposition of a property is deemed to be made at the fair market value of the property at the time of the disposition where, *inter alia*, the taxpayer disposes of it to any person by gift *inter vivos*.

3. Furthermore, by virtue of the second paragraph of section 232 of the TA, the disposition of a cultural property described in the third paragraph of that section (see point 1 above), such as the disposition of the bare ownership of such a property made in the course of a recognized gift with reserve of usufruct or use, does not give rise to a capital gain.

4. A “recognized gift with reserve of usufruct or use” made by a corporation in relation to a cultural property means a gift of cultural property, other than immovable property, that meets the following conditions set out in section 1 of the TA:

- (a) the gift is a gift *inter vivos* whereby the taxpayer disposes of the bare ownership of the cultural property but retains the usufruct or right of use;
- (b) in the case of cultural property described in the third paragraph of section 232 of the TA, the gift is made to an institution or a public authority in Canada that is, at the time of the gift, designated under subsection 2 of section 32 of the *Cultural Property Export and Import Act* for general purposes or for a specified purpose related to that cultural property, or is made to a certified archival centre or a recognized museum;
- (c) the usufruct or right of use is established only for the taxpayer and is not successive;
- (d) the usufruct or right of use is established for a term not exceeding 30 years;
- (e) the taxpayer was the sole owner of the cultural property immediately before the gift was made; and
- (f) the deed of gift provides that

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<sup>1</sup> The Ministère de la Culture et des Communications is now designated under the name of Ministère de la Culture, des Communications et de la Condition féminine. Order in Council 306-2007 dated 19 April 2007, (2007) 139 G.O. 2 (French), 1979.

- i. the taxpayer may not dispose of the taxpayer's usufruct or right of use without the consent of the bare owner,
- ii. the taxpayer must keep the cultural property in a place designated in the deed of gift and may move it only with the consent of the bare owner and under the terms and conditions determined by the bare owner,
- iii. the taxpayer must keep the cultural property insured against ordinary risks for the duration of the usufruct or right of use and undertake to inform the bare owner without delay of the deterioration or disappearance of the cultural property,
- iv. the bare owner may, where the cultural property deteriorates,
  - decide to restore it, in which case the bare owner designates the person for that purpose, who will be remunerated out of the proceeds of the insurance referred to in subparagraph iii above, or
  - decide not to restore it, in which case the bare owner may claim from the taxpayer the proceeds of the insurance referred to in subparagraph iii above, which the taxpayer will be required to give to the bare owner within 10 days of the receipt of the written confirmation of the decision, and
- v. the usufruct or right of use is extinguished where the cultural property disappears and the taxpayer may claim the proceeds of the insurance referred to in subparagraph iii above.

**5.** A loss sustained by a corporation as a result of the disposition of a cultural property that it owns may constitute an allowable capital loss, subject to the limits provided for in the TA. Under section 288 of the TA, such a loss from the disposition of any personal-use property is not allowable as a capital loss except, for example, in the case of precious property. For information about the rules concerning the disposition of precious property, see the current version of interpretation bulletin IMP. 265-1.

**6.** However, where a cultural property constitutes an asset used in the ordinary course of the corporation's business, such as inventory, the gain or loss resulting from the disposition of such a property must be taken into account in computing the corporation's income for the year.

## **APPRAISAL FEES**

**7.** The tax treatment of appraisal fees depends on whether the cultural property is inventory or capital property:

- (a) If it is inventory, the appraisal fees associated with the cultural property are deductible in computing the corporation's income within the limits of the general restriction on deductibility of expenses imposed by section 420 of the TA.
- (b) If it is capital property, the appraisal fees associated with the cultural property are not deductible in computing the corporation's income since they are not incurred to earn income from a business or property.

8. However, under paragraph *c.2* of section 255 of the TA, the appraisal fees incurred by a corporation before the disposition of a cultural property that is capital property must be added to the cost of the cultural property for the purpose of computing the adjusted cost base thereof, to the extent that the fees are reasonable, are not attributable to any other property and are not otherwise deducted by the corporation in computing its income for the taxation year.

### **DEDUCTION FOR GIFTS OF PROPERTY CLASSIFIED AS “CULTURAL PROPERTY”**

9. By virtue of paragraph *d* of section 710 of the TA, a corporation may deduct in computing its taxable income for the taxation year, to the extent that such amount was not deducted for a preceding taxation year, the aggregate of all amounts each of which is the eligible amount<sup>2</sup> of a gift made by the corporation in the year, in any of the five preceding taxation years (in the case of a gift made in a taxation year ending before March 24, 2006) or in any of the 20 preceding taxation years (in the case of a gift made in a taxation year ending after March 23, 2006) to

- (a) an institution or a public authority referred to in subparagraph *a* of the third paragraph of section 232 of the TA (paragraph (a) of point 1 of this bulletin), where the subject of the gift is a cultural property described in that third paragraph, that is, a Canadian cultural property or a Québec cultural property, including a recognized cultural property that is a Canadian cultural property or a Québec cultural property, or
- (b) a museum established under the Act respecting the Montréal Museum of Fine Arts or the National Museums Act, a certified archival centre or a recognized museum, where the subject of the gift is a recognized cultural property described in subparagraph *c* of the third paragraph of section 232 of the TA (paragraph (c) of point 1 of this bulletin), unless it is also described in subparagraph *a* of that third paragraph.

10. For the purpose of determining the eligible amount of a gift that qualifies for the deduction under subparagraph *i* of paragraph *d* of section 710 of the TA, section 710.1 of the TA provides that the fair market value of a cultural property described in subparagraph *a* of the third paragraph of section 232 of the TA, that is, a Canadian cultural property, is deemed to be the fair market value determined by the Canadian Cultural Property Export Review Board or the fair market value deemed to have been determined by the Board.

11. For the purpose of determining the eligible amount of a gift that qualifies for the deduction under subparagraph *ii* of paragraph *d* of section 710 of the TA, section 710.2 of the TA provides that the fair market value of a cultural property referred to in that subparagraph, that is, a recognized cultural property, is deemed to be the fair market value determined by the Commission des biens culturels du Québec.

12. For the purpose of determining the eligible amount of a gift of property that qualifies as a cultural property under subparagraph *b* of the third paragraph of section 232 of the TA, that is, a Québec cultural property, the fair market value of the property is determined according to the normal valuation rules. However, if the property that is the subject of a gift that qualifies for the

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<sup>2</sup> The eligible amount of a gift is equal to the amount by which the fair market value of the property that is the subject of the gift exceeds the amount of the advantage, if any, in respect of the gift (TA, ss. 7.21 and 7.22).

deduction under subparagraph i of paragraph d of section 710 of the TA has been classified as both Canadian cultural property and Québec cultural property, the fair market value accepted by the Ministère will be the fair market value determined by the Canadian Cultural Property Export Review Board in accordance with section 710.1 of the TA.

**13.** It is the view of the Ministère that, for the purposes of sections 710 and 232 of the TA, respectively, a gift or a disposition of a cultural property means a gift or a disposition of all the interests in the property referred to in those sections. Therefore, a gift or a disposition of an interest or part of the interests (including a residual interest) in a cultural property is not considered a gift or a disposition of a cultural property for the purposes of the TA.

**14.** Furthermore, section 710.4 of the TA provides that a gift of the bare ownership of a cultural property made by a corporation in the course of a recognized gift with reserve of usufruct or use (see point 4 of this bulletin) is deemed to be a gift of such a cultural property.

**15.** The fair market value of such a recognized gift with reserve of usufruct or use is deemed to be equal to the product obtained by multiplying the amount of the fair market value of the cultural property, determined with reference to the aforementioned rules, by one of the following percentages provided for in section 710.5 of the TA:

- (a) 87% where the duration of the usufruct or right of use provided for in the deed of gift granting it is 10 years or less;
- (b) 74% where the duration of the usufruct or right of use provided for in the deed of gift granting it is more than 10 years and 20 years or less; and
- (c) 61% in any other case.

**16.** Finally, the eligible amount of a gift referred to in points 10 through 15 of this bulletin must be increased by 25% where a corporation makes a gift, to a Québec museum that is a recognized museum, of a work of art that also qualifies as a cultural property for the purposes of paragraph d of section 710 of the TA.

## **ISSUANCE OF THE REQUIRED RECEIPTS AND CERTIFICATES**

**17.** By virtue of paragraph a of section 712 of the TA, no deduction is allowed unless the making of the gift is proven by a receipt for the gift filed with the Minister that meets the prescribed requirement under section 712R4 of the *Regulation respecting the Taxation Act (RTA)*, that is, it must be signed by an individual authorized by the donee to acknowledge gifts. However, a receipt may bear a facsimile signature if, for example, all the receipt forms of the donee are imprinted with the serial number of the receipt and the name and address of the donee, and are kept in such place as the Minister may designate.

**18.** Furthermore, in accordance with paragraph a of section 712 of the TA, the receipt referred to therein must contain, in a clear and unalterable manner, the statement and information prescribed by section 712R2 of the RTA. Thus, a receipt must contain a statement that it is a receipt in respect of income tax and the following information:

- the name and address of the donee;
- the serial number of the receipt;
- the place the receipt was issued;
- where the receipt concerns a gift other than one of money, the date the gift was received, a brief description of the property and, where applicable, the name and address of the appraiser of the property;
- the date the receipt was issued;
- the name and address of the donor; and
- the fair market value of the property at the time the gift was made.

**19.** Section 712R5 of the RTA provides that, for the purposes of section 712 of the TA, a receipt issued to replace a receipt previously issued must contain a clear indication to that effect and the serial number of the original receipt, in addition to the information required by section 712R2 of the RTA.

**20.** Finally, under section 712.0.1 of the TA, where the property that is the subject of the gift is a cultural property within the ambit of subparagraph ii of paragraph *d* of section 710 of the TA, no corporation may deduct an amount under that subparagraph unless, together with the fiscal return it is required to file for the year under section 1000 of the TA, it files with the Minister not only the receipt referred to in section 712 of the TA but also a certificate issued by the Commission des biens culturels du Québec (form TPF-712.0.1-V) stating that the property was acquired by a museum established under the Act respecting the Montréal Museum of Fine Arts or the National Museums Act, a certified archival centre or a recognized museum, in accordance with its acquisition and conservation policy and with the directives of the Ministère de la Culture et des Communications, and specifying the fair market value of the property determined in accordance with section 710.2 and, where applicable, section 710.4 of the TA.

### **SPOILED RECEIPT FORM**

**21.** Section 712.0.0.1 of the TA provides that a donee must meet the prescribed requirements in respect of a spoiled receipt form.

**22.** Those requirements, set out in section 712.0.0.1R1 of the RTA, are the following:

- (a) the spoiled receipt form must be kept in the records of the donee together with the duplicate of the receipt form; and
- (b) the donee must inscribe the word “cancelled” on the spoiled receipt form.

**23.** A receipt form on which the amount of the gift or the date the gift was received is written illegibly, incorrectly or in such a way as to be confusing is deemed to be spoiled.