

Income Tax

LMR. 93.1.18-1 **Payment of costs on appeal of an assessment**
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Reference(s): *An Act respecting the Ministère du Revenu* (R.S.Q., c. M-31), ss. 93.1.10, 93.1.17, 93.1.18, 93.2, 93.13 and 93.34
 An Act respecting property tax refund (R.S.Q., c. R-20.1), s. 28
 Regulation respecting fiscal administration (R.R.Q., 1981, c. M-31, r.1, as amended), ss. 93.1.18R1 and 93.13R1

This new bulletin supersedes bulletin IMP. 1072-1, on account of the repeal of section 1072 of the Taxation Act and the transfer, to the Act respecting the Ministère du Revenu, of the provisions concerning the right to appeal certain determinations of the Minister.

The purpose of this bulletin is to explain how the *Act respecting the Ministère du Revenu* (AMR) applies with respect to the payment of costs on appeal of an assessment.

APPLICATION OF THE ACT

1. Under section 93.1.10 of the AMR, any person who has notified a notice of objection to the Minister of Revenue of Québec may appeal to the Court of Québec to have the assessment vacated or varied after

- (a) the Minister has confirmed the assessment or reassessed;
- (b) 90 days have elapsed, in the case of an objection referred to in section 12.0.3 of the AMR, following notification of the notice of objection and no decision has been sent by the Minister by mail; or
- (c) 180 days have elapsed, in the other cases, following notification of the notice of objection and no decision has been sent by the Minister by mail.

2. Furthermore, section 93.2 of the AMR specifies the circumstances in which an individual may appeal to the Small Claims Division of the Court of Québec.

APPEAL TO THE COURT OF QUÉBEC

3. Pursuant to section 93.1.17 of the AMR, an appeal before the Court of Québec must be brought by means of a motion, in accordance with the ordinary procedure governing actions and applications in civil matters. Under section 93.1.10, the appeal may be brought before the Court of Québec sitting for the district in which the taxpayer resides or for the district of Québec or of Montréal, according to the district in which the assessment would be appealable under article 30 of the *Code of Civil Procedure* (R.S.Q., c. C-25) if it were an appeal to the Court of Appeal. In accordance with section 93 of the AMR, the motion must be served at the Montréal or Québec office of the legal department of the Ministère du Revenu.

4. Section 93.1.17 of the AMR specifies that two or more assessments may be the subject of a single appeal. However, two or more persons appealing assessments may not join in the same appeal. Therefore, were a person to notify notices of objection respecting three assessments and the Minister to confirm each of the assessments, a single motion to contest all three assessments could be filed in the office of the Court of Québec.

5. Under section 93.1.18R1 of the *Regulation respecting fiscal administration* (RFA), the fee payable is fixed in the amount of \$90 per appeal. Where two or more assessments are the subject of a single appeal, the fee is fixed in the amount of \$90 per assessment. Therefore, were a person to notify notices of objection respecting three assessments and the Minister to confirm each of the assessments, \$270 would have to be paid to the clerk upon the filing of the motion to contest the three assessments.

6. If a motion is filed under the *Act respecting property tax refund*, section 28 of that Act provides that the fee payable is that in respect of a summary appeal, that is, \$35 per assessment.

7. The fee payable is recovered if the Court rules in favour of the person, in whole or in part.

8. Furthermore, where the person is an individual, section 93.1.18 of the AMR states that in no case may the Court of Québec compel that person to pay any additional costs.

SUMMARY APPEAL TO THE SMALL CLAIMS DIVISION

9. In accordance with section 93.13 of the AMR, a summary appeal is exercised by means of the form prescribed to that effect (form LM-93.13-V), in which the person sets out the reasons for the application and all the relevant facts. Once completed, the form must be filed with the office of the Small Claims Division of the Court of Québec. It may also be sent by registered mail.

10. Section 93.13 of the AMR specifies that two or more assessments may be the subject of a single appeal. However, two or more persons may not join in the same summary appeal. Therefore, were a person to notify notices of objection respecting three assessments and the Minister to confirm each of the assessments, a single form to contest all three assessments could be filed in the office of the Small Claims Division of the Court of Québec.

11. Under section 93.13R1 of the RFA, the fee payable is fixed in the amount of \$35 per summary appeal. Where two or more assessments are the subject of a single appeal, the fee payable is fixed in the amount of \$35 per assessment. Therefore, were a person to notify notices of objection

respecting three assessments and the Minister to confirm each of the assessments, \$105 would have to be paid to the clerk upon the filing of the form to contest the three assessments.

12. Furthermore, section 93.34 of the AMR states that the judgment disposing of the motion adjudicates as to the costs. However, the Court of Québec cannot compel the payment of any costs in addition to the amount set out in point 11 above, other than the costs of witnesses and experts.