

Income Tax

RAMQ. 34-5/R2 Employer Contribution to the Health Services Fund: Exemption Granted to
Certain Indian Organizations

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Reference(s): *Act respecting the Régie de l'assurance-maladie du Québec* (CQLR, c. R-5),
sections 33 and 34

This version of bulletin RAMQ. 34-5 supersedes the version of August 31, 2000. The position set out in the bulletin remains the same. Points 1 and 2 were revised to take into account amendments made to sections 33 and 34 of the Act respecting the Régie de l'assurance maladie du Québec (ARAMQ). The term "person of Indian ancestry" was removed from the bulletin because it was deleted from the Taxation Act (CQLR, c. I-3) in 2007. The Appendix to the bulletin was also revised to take into account the fact that Category IA land has been attributed to the Crees of Oujé-Bougoumou for their exclusive use and benefit in order to give effect to the amendments made to the Cree Naskapi (of Quebec) Act (S.C. 1984, c. 18), under which the Crees of Oujé-Bougoumou are recognized as a band within the meaning of that Act. Finally, some other technical changes were made.

The purpose of this bulletin is to explain the extent to which certain Indian organizations are exempt from paying a contribution under the ARAMQ in respect of the remuneration they pay.

APPLICATION OF THE ACT

1. Pursuant to section 34 of the ARAMQ, every employer, except a prescribed employer, must pay to the Minister of Revenue a contribution equal to the specified percentage (under the second paragraph of that section) of the wages that the employer pays to, is deemed to pay to or pays in respect of an employee of the employer who reports for work at the employer's establishment in Québec or, if the employee is not required to report for work at an establishment of the employer, of the wages that the employer pays to, is deemed to pay to or pays in respect of the employee from such an establishment in Québec.
2. The term "wages" is defined in section 33 of the ARAMQ as base wages, within the meaning of section 1159.1 of the *Taxation Act*, with certain exclusions.
3. The income from an office or employment received by an Indian constitutes wages within the meaning of section 33 of the ARAMQ.

4. From an administrative point of view, Revenu Québec considers that no contribution under the ARAMQ has to be paid in respect of wages reasonably attributable to non-commercial activities of an Indian organization that resides on a reserve, where such activities are intended for the greater welfare of the Indians living on a reserve. This practice has been followed since October 29, 1999.

5. To benefit from such an exemption, the Indian organization must be devoted to, *inter alia*, the social, cultural, educational or economic development of Indians living on a reserve. Furthermore, the organization must fall within the jurisdiction of one or more bands or of one or more band councils representing one or more bands.

6. For the purposes of this bulletin, commercial activities include the rendering of services and the creation of a product to be supplied to others in return for consideration. Governmental or quasi-governmental activities constitute non-commercial activities.

7. The term "Indian organization" means a legal person, a commission, a council, an association or some other organization.

8. An Indian organization resides on a reserve when the reserve is the place where the central management and control over the activity of the organization is actually located. Revenu Québec usually considers the central management and control of the activity of an Indian organization to be exercised by the group that performs the function of a board of directors of the organization. However, it may be that the real management and control of the activity of an Indian organization is exercised by some other person or group. Generally, central management and control of the activity of an Indian organization is exercised at the organization's principal place of business, but it is recognized that this function may be legitimately exercised at a place other than the organization's principal administrative office. It is a question of fact where the central management and control of the activity of an Indian organization is exercised.

9. Revenu Québec considers that the phrase "an Indian who lives on a reserve" means an Indian who lives on a reserve in a self-contained domestic establishment that is his or her principal place of residence and that is the centre of his or her daily routine.

10. For the purposes of this bulletin, the phrase "social, cultural, educational or economic development" includes the supply of social services, such as training, counselling services and health care.

11. In this bulletin,

the term "band" means

- (a) a band within the meaning of subsection 2(1) of the *Indian Act* (R.S.C. 1985, c. I-5);
- (b) a band within the meaning of subsection 2(1) of *Cree-Naskapi (of Quebec) Act*;
- (c) a legal person that is a designated corporation within the meaning of section 2 of the *Indians and Bands on certain Indian Settlements Remission Order* made by Order in Council P.C. 1992-1052 dated June 3, 1992, as amended by Order in Council

P.C. 1994-2096 dated December 14, 1994, under the *Financial Administration Act* (R.S.C. 1985, c. F-11);¹ or

- (d) the Band within the meaning of subsection 2(1) of the *Sechelt Indian Band Self Government Act* (S.C. 1986, c. 27);

the term "band council" means

- (a) in the case of a band referred to in paragraph (a) of the definition of "band" above, a council of the band within the meaning of subsection 2(1) of the *Indian Act*;
- (b) in the case of a band referred to in paragraph (b) of the definition of "band" above, a council within the meaning of subsection 2(1) of the *Cree-Naskapi (of Quebec) Act*; or
- (c) in the case of the Band referred to in paragraph (d) of the definition of "band" above, the Council within the meaning of subsection 2(1) of the *Sechelt Indian Band Self Government Act*;

the term "Indian" means an Indian within the meaning of the *Indian Act*; and

the term "reserve" means

- (a) a reserve within the meaning of subsection 2(1) of the *Indian Act*;
- (b) Category IA land or Category IA-N land within the meaning of subsection 2(1) of the *Cree-Naskapi (of Québec) Act*;
- (c) the Hunter's Point, Kiticsakik and Pakuashipi Indian settlements and an Indian settlement within the meaning of section 2 of the *Indians and Bands on certain Indian Settlements Remission Order* made by Order in Council P.C. 1992-1052 dated June 3, 1992, as amended by Order in Council P.C. 1994-2096 dated December 14, 1994, under the *Financial Administration Act*, or within the meaning of section 1 of the *Indians and Bands on Certain Indian Settlements Remission Order* (1997) made by Order in Council P.C. 1997-1529 dated October 23, 1997, under that Act; or
- (d) Sechelt lands within the meaning of subsection 2(1) of the *Sechelt Indian Band Self Government Act*.²

12. For the purposes of point 5 of this bulletin, an Indian organization falls within the jurisdiction of one or more bands or of one or more band councils representing one or more bands where

- the band, the band council or the individual members of the band or band council appoint or elect a majority of the members of the governing body of the Indian organization (for example, the directors); and

¹ As at the date of this bulletin, the only legal person covered by this paragraph (c) is the Oujé-Bougoumou Development Corporation.

² See the Appendix to this bulletin for a list of the reserves situated in Québec.

- the Indian organization is required by legislation, bylaws or an operating agreement to submit its operating budget and, where applicable, its capital budget to the band or band council for review and approval.

APPENDIX
RESERVES SITUATED IN QUÉBEC

I – Reserves within the meaning of the *Indian Act* (R.S.C. 1985, c. I-5)

Akwesasne
Cacouna
Coucouchache
Doncaster
Essipit
Gesgapegiag
Kahnawake
Kebaowek
Kitigan Zibi
La Romaine
Lac-John
Lac-Rapide
Lac-Simon
Listuguj
Maliotenam
Manawan
Mashteuiatsh
Matimekosh
Mingan
Natashquan
Obedjiwan
Odanak
Pessamit
Pikogan
Timiskaming
Uashat
Wemotaci
Wendake
Whitworth
Wôlinak

II – Category IA land attributed to the Cree Nation

Chisasibi
Eastmain
Mistissini
Nemaska

Oujé-Bougoumou
Waskaganish
Waswanipi
Wemindji
Whapmagoostui

III – Category IA-N land attributed to the Naskapi Nation

Kawawachikamach

IV – Indian establishments

Hunter's Point
Kanesatake
Kitcisakik
Pakuashipi
Winneway