

Income Tax

LAF. 27.3-1/R3 Prescription of Tax Debt Recovery

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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), section 27.3
Taxation Act (CQLR, c. I-3), section 1033.13

This version of interpretation bulletin LAF. 27.3-1 (previously LMR. 27.3-1) supersedes the version of December 28, 2006. The bulletin was revised to include additional information regarding judgments rendered pursuant to section 13 of the Tax Administration Act. Furthermore, some changes in respect of style and conformity were made to ensure technical accuracy.

This bulletin establishes guidelines with respect to section 27.3 of the *Tax Administration Act*¹ (TAA), which provides that the prescriptive period for the recovery of tax debts is 10 years.

APPLICATION OF THE ACT

1. According to section 27.3 of the TAA, the recovery of an amount owed under a fiscal law is prescribed by 10 years after the day on which the notice of assessment was sent or, in the case of charges or fees, from the time the charges or fees are applied.
2. In civil law, prescription is one of the causes of extinction of obligations. A person liable for the payment of an amount owed under a fiscal law (hereinafter referred to as the “debtor”) may raise the extinction of the debt by prescription against the Minister of Revenue. This is so where the debt was not discharged before the expiry of the 10-year period referred to above, to the extent that there was no cause to interrupt or suspend the prescription.

STARTING POINT OF THE PRESCRIPTIVE PERIOD

3. Even if an assessment is the subject of an objection, an appeal or a summary appeal, prescription runs, by virtue of section 27.3 of the TAA, from the day on which the notice of assessment was sent by the Minister to the debtor. That is the date on which the amount owed, including duties, interest and penalties, becomes payable. Pursuant to section 510 of chapter 21 of

¹ This Act was formerly entitled *An Act respecting the Ministère du Revenu*. The title was changed by section 91 of chapter 31 of the Statutes of Québec 2010.

the Statutes of Québec 2004, this starting point of the prescriptive period applies in respect of notices of assessment sent after October 31, 2004.

4. With respect to charges or fees, prescription runs from the day the charges or fees are applied.

CALCULATION OF THE PRESCRIPTIVE PERIOD

5. The prescriptive period is calculated according to the rules provided for in the *Civil Code of Québec* (CCQ). In this regard, article 2879 of the CCQ provides the following:

- The period of time required for prescription is reckoned by full days.
- The day on which prescription begins to run is not counted.
- Prescription is acquired only when the last day of the period has elapsed.
- Where the last day of the period is a Saturday or a non-judicial day, prescription is acquired only on the following judicial day.

6. Under paragraph 23 of section 61 of the *Interpretation Act* (CQLR, chapter I-16), the following are holidays (that is, non-judicial days):

- (a) Sundays;
- (b) January 1;
- (c) Good Friday;
- (d) Easter Monday;
- (e) June 24, the National Holiday;
- (f) July 1, the anniversary of Confederation, or July 2 when July 1 is a Sunday;
- (g) the first Monday of September, Labour Day;
- (h) the second Monday of October;
- (i) December 25;
- (j) the day fixed by proclamation of the Governor General for the celebration of the birthday of the Sovereign; and
- (k) any other day fixed by proclamation or order of the Québec government as a public holiday or as a day of thanksgiving.

INTERRUPTION OF PRESCRIPTION

7. Before prescription is acquired in favour of the debtor, an event may occur that interrupts it, as provided under articles 2889 to 2903 of the CCQ.

8. The interruption of prescription results in the extension of the period during which the Minister is lawfully entitled to recover the tax debt from the debtor.

9. Where prescription is interrupted, the time that has already elapsed no longer counts. Once the event causing the interruption ceases, a new prescriptive period of the same duration begins to run.

10. Prescription is interrupted where, before the expiry of the prescriptive period, the debtor acknowledges the obligation to the Minister or the Minister files a judicial demand to recover the tax debt that is subject to prescription.

Acknowledgment of the obligation

11. Acknowledgment of the obligation by the debtor may be express or tacit. Such acknowledgment occurs where, for example, part of the capital or interest is paid, a payment agreement is entered into with the Minister (with or without security) or an application is made for additional time to pay the debt. The debtor's renunciation of the benefit of a period of time which has elapsed also constitutes an event that interrupts prescription.

Filing of a judicial demand

12. The notion of the filing of a judicial demand is very broad in scope, encompassing all judicial proceedings brought by the Minister for the purpose of recovering a tax debt. For example, prescription is interrupted in cases where the Minister's rights are asserted by means of

- a writ of seizure before judgment;
- a writ of seizure of movable or immovable property in execution; or
- a writ of seizure by garnishment after judgment.

13. Furthermore, any application by the Minister to share in a distribution with other creditors also interrupts prescription. For example, such is the case where the Minister files a claim incidental to

- a judicial sale;
- a sale by judicial authority;
- another creditor's court-ordered seizure by garnishment;
- a seizure by garnishment of salary;
- a voluntary deposit;
- a bankruptcy or a proposal under the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3);
or
- a proposed arrangement under the *Companies' Creditors Arrangement Act* (R.S.C. 1985, c. C-36).

Judgment rendered under section 13 of the TAA

14. Prescription is also interrupted from the date of a judgment rendered pursuant to section 13 of the TAA. Any judgment under that section is equivalent to a judgment rendered by a competent court and has all the effects thereof, except in respect of interest on the amount granted, which is computed at the rate determined in accordance with section 28 of the TAA and is capitalized daily. Furthermore, since the judgment does not create a new debt obligation, Revenu Québec can execute the judgment as long as the prescriptive period for the tax debt that is the object of the judgment has not expired.

Other cases of interruption under section 27.3 of the TAA

15. The third paragraph of section 27.3 of the TAA provides for other cases of interruption of the prescription of tax debts. Thus, in addition to the cases of interruption provided for in the CCQ. and referred to in the previous points, prescription is interrupted where

- (a) the Minister serves or sends a notice of seizure by garnishment further to section 15, 15.2 or 15.3 of the TAA;
- (b) the Minister applies a tax refund or allocates an amount payable by a public body to the payment of the debt, in accordance with section 31 or 31.1.1 of the TAA;
- (c) a formal demand is sent to or served on a person by the Minister, in accordance with section 39 of the TAA; or
- (d) the Minister has made an assessment under any of sections 14, 14.5 and 24.0.1 of the TAA or sections 1029.8.61.46 and 1035 of the *Taxation Act* (TA), in respect of another person concerning the debt.

SUSPENSION OF PRESCRIPTION

16. Before prescription is acquired in favour of the debtor, it may also be suspended. Suspension is a temporary cessation of the running of prescription due to the occurrence of an event to which the law attaches this effect. Once the event causing the suspension ceases, the running of prescription resumes from the point in the prescriptive period at which the suspension occurred.

17. Suspension, unlike interruption, does not nullify the benefit of a period of time which has elapsed. That time counts and is added to the time that elapses after the event causing the suspension ceases. In other words, the period of time required for prescription is calculated by totalling the time elapsed during the prescriptive period before the suspension occurs and the time that elapses after the suspension ceases.

18. In accordance with the second paragraph of section 27.3 of the TAA, the 10-year extinctive prescription of tax debts is suspended for the period during which the Minister cannot recover an unpaid amount by reason of section 12.0.3 of the TAA. This is the case where, for example, an individual has notified to the Minister a notice of objection to an assessment issued under the TA and the Minister's decision in that regard has not yet been sent to the individual.

19. The second paragraph of section 27.3 of the TAA also provides for other cases of suspension of the prescription of tax debts. Prescription is also suspended for the period during which

- (a) the Minister has security in guarantee of the payment of the debt; or
- (b) the debtor is not resident in Québec.

Security for departure from Canada

20. Pursuant to sections 1033.2 to 1033.13 (Chapter IV.1 of Title III of Book IX of Part I) of the TA, a debtor who leaves Canada may elect to postpone the payment of income tax relating to the deemed disposition of the debtor's property. A debtor who makes this election must, in certain cases, provide to the Minister adequate security to cover that tax. Under section 1033.13 of the TA, the prescription of the tax debt is also suspended for the time during which security is accepted or is deemed to be accepted by the Minister under the aforementioned Chapter IV.1.

TRANSITIONAL RULES

21. The prescriptive period of tax debts was extended from five to 10 years when chapter 1 of the Statutes of Québec 2005 came into force. (See section 310 of that chapter.) This 10-year prescriptive period applies in respect of situations existing on March 30, 2004, account being taken of the time already elapsed.

22. Thus, the 10-year prescriptive period applies to tax debts payable on March 30, 2004, and those which become payable thereafter. Furthermore, with respect to a tax debt that became payable before March 30, 2004, the period of time elapsed since the day on which the tax debt became payable is taken into account in calculating the 10-year prescriptive period, provided it would have been taken into account in calculating the former five-year prescriptive period.