

Income Tax

IMP. 87-1/R1 Interest awarded under articles 1618 and 1619 of the *Civil Code of Québec* on an indemnity for physical or moral damages due to bodily injury or death

Date of publication: October 31, 2005

Reference(s): *Taxation Act* (R.S.Q., c. I-3), s. 87 (par. c)

This bulletin supersedes bulletin IMP. 87-1 dated November 30, 1990.

This bulletin states the policy of the Ministère du Revenu concerning the tax treatment of interest awarded under articles 1618 and 1619 of the *Civil Code of Québec* (S.Q., 1991, c. 64) (CCQ) on an indemnity for physical or moral damages due to bodily injury or death.

APPLICATION OF THE ACT

1. Generally, the Ministère takes the view that an indemnity, whether in the form of a lump sum or periodic payments, that is awarded by a competent tribunal for physical or moral damages due to bodily injury or death does not constitute an amount to be included in computing the taxpayer's income, to the extent that it may reasonably be considered an indemnity and not income arising from an office, employment or a business. (See in this regard the current version of bulletin IMP. 28-2.)
2. Depending on the circumstances surrounding the granting of such an amount, interest as well as an additional indemnity may be awarded to the taxpayer under articles 1618 and 1619 of the CCQ, respectively.
3. "Interest" is not defined under the *Taxation Act* (TA). However, the Ministère considers it to represent the return, consideration or indemnity for the use or holding, by a person, of a sum of money belonging or owing to another person.
4. In an action for physical or moral damages sustained due to bodily injury or death, where the damages awarded were not liquidated on the date the action was filed and interest is awarded under article 1618 of the CCQ from the date of filing to the date of the judgment, pursuant to the judgment of a competent tribunal, the Ministère considers such interest to be capital, rather than interest, for purposes of the TA.
5. According to the Ministère, an additional indemnity awarded under article 1619 of the CCQ must receive the same tax treatment as the amount to which it is added. In fact, the additional indemnity

does not constitute interest but rather damages due to the delay. Thus, an additional indemnity awarded under article 1619 of the CCQ, pursuant to the judgment of a competent tribunal, constitutes a portion of the indemnity awarded for physical or moral damages due to bodily injury or death, to the extent that the principal indemnity qualifies as such.

6. There is no further indemnity for delay, however, once the damages are liquidated under a judgment. The amount then becomes owing and payable, and the obligation to pay a specific amount arises.

7. Thus, interest accrued after the date of the judgment (or out-of-court settlement) must be included in computing a taxpayer's income under paragraph *c* of section 87 of the TA. However, under section 494 of the TA, income arising from property acquired by an individual who is under the age of 21 years, or by another person on behalf of that individual, as an indemnity for physical or moral injury to the individual need not be included in computing the individual's income. (See in this regard the current version of bulletin IMP. 28-2.)