Revenu Québec
www.revenu.gouv.qc.ca

The Tax Effects of Separation and Divorce

Québec

The information in this brochure does not constitute a legal interpretation of the provisions of the *Taxation Act* or any other legislation. If you require additional information, contact the office of Revenu Québec in your area.

Contents

1 Introduction

A separation or divorce is always difficult. Apart from the emotional upheaval experienced by the family, numerous legal and administrative details must be taken care of.

The changes that result from a separation or divorce may also have tax consequences for the parties involved. Revenu Québec has therefore prepared this brochure specifically for separated or divorced persons. The brochure contains

- information to help you complete the lines of the income tax return that relate to support payments (lines 142, 225, 250, 276 and 277). For greater clarity, information for recipients of support is presented in Chapter 3 and information for payers of support in Chapter 4;
- explanations regarding the support-payment collection program introduced on December 1, 1995 (Chapter 5). The collection program, which is administered by Revenu Québec, is intended to ensure that support payments awarded by the court are paid on a regular basis;
- explanations on various subjects (Chapters 6 to 9) related to a separation or divorce: judicial or extrajudicial expenses, reconciliation of spouses, tax credits and RRSPs.

In addition, it will help you to know that a model for the determination of child-support payments was introduced by the Québec government on May 1, 1997. The model provides precise and objective norms to facilitate the determination of the amount of the child-support payments and standardize the method of calculation. The amount of child support is determined on the basis of the number of children, the income earned by both parents, certain additional expenses relating to the children's needs, if applicable, and the nature of the custody arrangement.

If you want to have an overview of the program, consult the brochure entitled *The Québec Model for the Determination of Child Support Payments,* published by the Ministère de la Justice. It describes how the program works, and includes the "Child Support Determination Form" and the "Table to Determine the Basic Parental Contribution." You may obtain these documents at the offices of the Ministère de la Justice or Communication-Québec, at the courthouse in your area, at most youth centres, and at the offices of individuals who work in the fields of law or family mediation (lawyers, notaries, social workers, psychologists, guidance counsellors). You may also obtain these documents via the Internet at the following address: www.justice.gouv.qc.ca.

If you require additional information, you may contact an office of Revenu Québec (see the list at the end of this publication).

2 Definitions

Allowance

The term "allowance" designates a specific amount that the court or the two parties concerned have determined in advance (in the judgment or written agreement) to be the amount that the payer must remit **on a periodic basis** to the recipient. Revenu Québec considers the payments to be an allowance only if the recipient does not have to account for the amounts concerned; this is the basic criterion used to determine whether an amount is an allowance.

An allowance may also be

- a predetermined amount that is indexed on the basis of the index established under *the Act respecting the Québec Pension Plan* or a similar formula. Support payments awarded under a judgment rendered on or after January 1, 1988, are automatically indexed;
- an amount that is not predetermined, but is calculated on the basis of references given in the judgment or written agreement.

Arrears

The term "arrears" refers to an amount, payable as support under a judgment or written separation agreement, that was not paid on time but that meets the basic criteria to qualify as a support payment.

Child support

The term "child support" refers to any support payment that, in accordance with the judgment or written agreement under which it is payable, is not intended solely for the maintenance of the payer's spouse or former spouse, or the mother or father of the payer's child.

De facto spouse

The term "de facto spouse" designates an individual of the opposite sex or the same sex who, at a particular time in the year,

- was living in a conjugal relationship with a person who was the biological or adoptive parent (legally or otherwise) of a child of whom the individual was also the parent; or
- had been living in a conjugal relationship with a person for at least 12 consecutive months before that time (the 12-month period is considered to have been uninterrupted if the spouses lived apart because of the breakdown of their relationship for a period of less than 90 days).

Former spouse

The term "former spouse" designates the person who was the individual's spouse before the breakdown of the relationship.

Payable on a periodic basis

The expression "payable on a periodic basis" refers to the fact that the individual in question is required to make support payments at regular intervals that are determined in advance in the judgment or written agreement. The interval between payments may be as long as a year. The payments are not necessarily to be made throughout the lifetime of the recipient: a final payment date may be determined under the judgment or agreement. This date may be changed only by a new judgment or written agreement.

It should be noted that if a judgment or written agreement stipulates that support is to be paid for part of the year only, the support is considered to be payable on a periodic basis if it can be shown that the amount is paid **during this period** for the benefit of the recipient, for the benefit of a child of the recipient, or for the benefit of the recipient and a child of the recipient.

Payer

The term "payer" is used to designate a person who makes **support payments** to his or her spouse or former spouse, or to the mother or father of his or her child.

Recipient

The term "recipient" is used to designate a person who receives **support payments** from his or her spouse or former spouse, or from the mother or father of his or her child.

Self-contained domestic establishment

A dwelling, an apartment or a similar place in which a person ordinarily eats and sleeps.

Spouse

The term "spouse," as used in the *Taxation Act*, designates the person to whom an individual is legally married **or** with whom the individual has contracted a civil union, **or** the person who is the individual's de facto spouse.

Spouse on December 31

The expression "spouse on December 31" is used in this brochure to designate the person who was an individual's spouse at the end of the day on December 31.

However, if the individual was living apart from his or her spouse on December 31 because of the breakdown of their relationship, but the separation lasted for less than 90 days, the individual is **considered to have had a spouse on December 31**.

Support

The term "support," as used in this brochure, designates an amount paid to an individual on a periodic basis by his or her spouse or former spouse, or received from his or her spouse or former spouse, where the individual is living apart from the person concerned further to the breakdown of their relationship. It also designates an amount paid on a periodic basis to (or received on a periodic basis from) a person who has never been the individual's spouse, but who is the parent of a child of whom the individual is also the parent.

However, for the payments to be considered support payments, **certain basic criteria** must be met (see sections 3.1 and 4.1).

Written agreement

A "written agreement" is a document signed by the payer and the recipient or their duly authorized legal representatives that sets out the terms of an accord concerning the periodic payment of support, where an individual has agreed to pay support for the benefit of his or her spouse or former spouse, for the benefit of children born of the relationship, or for the benefit of his or her spouse or former spouse and the children born of the relationship.

IMPORTANT

> When the terms "spouse," "relationship," and "breakdown" are used in this brochure, they apply (unless otherwise indicated) to persons who are legally married, to persons who have contracted a civil union and to de facto spouses. The term "judgment" also includes a decree or order made by a competent tribunal.

3 Recipients of support

If you received support payments, you must report the amounts on line 142 of your income tax return, provided the basic criteria described in section 3.1 are met. However, **if you are subject to the tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income**, you must complete work chart 142 (the work charts are grouped together after the schedules included with the income tax return) in order to determine the amount to enter on line 142.

To find out whether these tax rules concerning child support apply to you, refer to section 3.2.

3.1. Basic criteria used to determine whether amounts received constitute support payments

- Where you are the payer's spouse or former spouse, the support is payable under a judgment or written agreement.
- The amounts constitute an allowance payable on a periodic basis (see the definitions in Chapter 2) for your benefit, the benefit of your children or for your benefit and that of your children and you have full discretion as to the use of the amount (the latter requirement does not apply to an amount payable further to a judgment rendered or a written agreement entered into after March 27, 1986, but before January 1, 1988).
- At the time the payment is made, you and the payer are living apart (in the case of taxation years before 1997, you and the payer must have been living apart both at the time of payment and throughout the remainder of the year).
- Where you are the payer's spouse or former spouse, you and the payer were living apart because of the breakdown of your relationship.
- Where you and the payer are not spouses or former spouses but are the biological parents of the child for whose maintenance the support is paid, the support is payable under a judgment rendered by a competent tribunal.

3.2 Tax treatment of child support

Under tax measures that came into effect on May 1, 1997, child-support payments made further to a judgment rendered or a written agreement entered into after April 30, 1997, are not deductible from the payer's income and do not have to be included in the recipient's income.

The new tax rules apply only to child-support payments. If you receive support payments **solely** for your maintenance as a spouse or former spouse, and no support payments are made for the maintenance of your children, you must include the total amount of support in your income. However, if you receive support payments **solely** for the maintenance of your children, or for your maintenance as well as that of your children, read the following information.

Since May 1, 1997, judges have been required to clearly specify in their judgments which portion of the support payment is for the benefit of a child and which portion is for the benefit of the spouse or former spouse. The same rule applies to written agreements.

Where the judgment or written agreement does not specify the amount awarded solely for the benefit of the spouse, the total amount is deemed to be child support. Amounts paid to a third party for specific expenses are also deemed to be child support. For example, where the judgment or written agreement provides for the payment of certain expenses directly to a third party and it is not clearly indicated which expenses are made for the benefit of the spouse, all of the amounts are considered to be child support. Therefore, unless the amounts intended for child support and for spousal support are clearly specified, all of the support received is considered child support, and is not taxable.

3.2.1 Judgment rendered or written agreement entered into after April 30, 1997

Child support that you received after April 30, 1997, further to a judgment rendered or a written agreement entered into after April 30, 1997, does not have to be included in your income.

Child-support payments are neither taxable for the recipient nor deductible for the payer as of the date on which the judgment is rendered or the written agreement is entered into, provided the date is after April 30, 1997.

3.2.2 Judgment rendered or written agreement entered into before May 1, 1997

Child support received further to a judgment rendered or a written agreement entered into before May 1, 1997, must be included in your income except in the following situations:

(a) The judgment or written agreement stipulates that child-support payments received as of a particular date that is after April 30, 1997, do not have to be included in the recipient's income and are not deductible from the payer's income.

The date as of which the child-support payments are neither taxable for the recipient nor deductible for the payer is the date specified in the judgment or written agreement, provided the date is after April 30, 1997.

(b) The judgment or written agreement was varied after April 30, 1997, in order to increase or decrease the amount of child support payable. As a rule, such a variation is made where there is a motion for revision of support, or where an addendum is to be integrated into a written agreement. If the motion is granted or the addendum is accepted, the revised amount of child support will no longer be taxable for the recipient or deductible for the payer. (The child-support payments continue to be taxable for you if the motion or addendum is refused.)

The date as of which child-support payments are neither taxable for the recipient nor deductible for the payer is the date on which the first payment of the revised amount of child support is required to be made.

Regardless of the automatic modifications made respecting amounts paid as child support, under a clause in the judgment or written agreement (for example, under an indexation clause or an adjustment related to the payer's income), the child support continues to be taxable for the recipient and deductible for the payer.

(c) A new judgment or written agreement (dated after April 30, 1997) increases or decreases the total amount payable as child support. This generally occurs in one of the following situations:

- A written agreement entered into before May 1, 1997, is confirmed by a judgment rendered after April 30, 1997.
- A written agreement entered into before May 1, 1997, is replaced by a written agreement entered into after April 30, 1997.
- A judgment rendered before May 1, 1997, respecting interim relief is replaced by a divorce decree granted or a judgment of separation from bed and board rendered after April 30, 1997.
- A judgment of separation from bed and board rendered before May 1, 1997, is replaced by a divorce decree granted after April 30, 1997.
- A judgment of separation from bed and board or a divorce decree granted before May 1, 1997, or a motion for revision of support accepted before May 1, 1997, is appealed and the appeal court decision is rendered after April 30, 1997.

In all these cases, the rules under which child support is not taxable for the recipient or deductible for the payer apply only if the total amount of child support payable under a judgment rendered or a written agreement entered into after April 30, 1997, is different from the total amount of child support that was payable under the judgment rendered or written agreement entered into before May 1, 1997. If the total amount of child support does not change, the recipient must continue to include the child-support payments in his or her income.

The date as of which the child-support payments are neither taxable for the recipient nor deductible for the payer is the date of the judgment rendered or the written agreement entered into after April 30, 1997, that changes the total amount of child support. See examples 1 to 3.

Example 1

Under a judgment rendered before May 1, 1997, Jim must pay child support of $700 on the first day of each month to his former spouse Lucy. A new judgment rendered on July 7, 1998, reduces the amount of child support to $500 per month. The date on which the child-support payments ($500) become non-taxable for Lucy and non-deductible for Jim is July 7, 1998.

Example 2

Under a written agreement entered into before May 1, 1997, Rosemary must make support payments of $1,000 per month for the benefit of her former spouse and their children. This agreement is confirmed by a judgment rendered after April 30, 1997. The judgment does not revise the amount of support payments, but it specifies that of the total amount payable per month, $200 is for the benefit of Rosemary's former spouse and $800 is for the benefit of the children. The judgment therefore reduces the child support from $1,000 to $800 per month, and also renders the payer and the recipient subject to the rules under which child support is neither taxable nor deductible.

Example 3

Under a judgment rendered on January 15, 1997, Bob must make support payments of $900 per month ($700 in child support and $200 in spousal support). On May 15, 1999, a new judgment revises the proportions of support but not the overall amount. Under the new judgment, Bob must pay $600 per month in child support and $300 in spousal support. As of May 15, 1999, the child support is not deductible for Bob or taxable for his former spouse.

(d) The judgment was rendered or the written agreement was entered into before May 1, 1997, but the recipient and the payer make a joint election on form TP-312-V, *Election Concerning Child Support*, so that child support will not be taxable or deductible as of a date subsequent to April 30, 1997.

The date as of which child-support payments are neither taxable for the recipient nor deductible for the payer is the date specified by the recipient and the payer on form TP-312-V, provided the date is after April 30, 1997. The election may be made without it being necessary to vary the judgment that was rendered or the written agreement that was entered into before May 1, 1997. (**This means that the amounts payable as support are not changed**.) **Once the election is made, the parties involved cannot revert to the former tax measures**. See example 4.

Example 4

Under a written agreement entered into on January 1, 1997, Marie has custody of their three children and Steve must make support payments of $1,100 ($900 in child support and $200 in spousal support) on the first day of each month.

Marie and Steve do not want to make changes to their written agreement, but they would like the new tax rules to apply to child support payable on or after September 1, 1998. They must therefore complete and sign form TP-312-V and send it to the Sainte-Foy office or the Montréal office (complexe Desjardins) of Revenu Québec.

As of September 1, 1998, Marie no longer includes in her income the $900 per month she receives in child support, but she must continue to include the $200 per month she receives in spousal support (that is, the amount she receives solely for her own benefit). Steve can no longer deduct from his income the $900 he pays in child support but can continue to deduct the $200 per month he pays in support to his former spouse. If Steve makes all of his support payments for 1998, Marie must enter $9,600 on line 142 of her 1998 return. This amount includes $7,200 in child support ($900 x 8 months for child support paid from January 1 to August 1, 1998) and $2,400 in spousal support ($200 x 12 months). For the 1999 and 2000 taxation years, Marie enters $2,400 on line 142 for each year.

3.2.3 Order in which support payments are considered to have been made

Under the current tax rules, child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income. Child-support payments subject to these rules are considered to have been received before any child support payable for previous periods and before any spousal support.

This means that, when child support and spousal support are both payable at the end of a calendar year, all the payments made during the year are considered to have been paid first as child support. Consequently, the recipient is not required to include an amount in his or her income if the amount received is lower than the total of the following amounts:

- the non-taxable support owed for the current year;
- the non-taxable support owed for previous years.

However, if you are subject to the tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income, you must **complete work chart 142** of the income tax return in order to determine the amount of support to enter on line 142 of your income tax return.

If the child support is not paid in full before the end of the taxation year, the arrears respecting this child support or respecting spousal support are added to the support payable for the following year. Once the child support payable for the current year and previous years has been paid in full, any excess amount is considered to be spousal support; it is taxable for the recipient and deductible for the payer. See example 5.

Example 5

Ron is required to make support payments of $9,000 for 2001. This amount comprises spousal support of $3,000 ($250 per month) and child support of $6,000 ($500 per month). At the end of the year, however, his payments total only $7,000. This means, under the above-mentioned rules, that he has paid his child support ($6,000) in full and is considered to have paid $1,000 in spousal support. Ron's former spouse must therefore include $1,000 in her income for 2001, and Ron may deduct this amount from his income for 2001. The amount not received ($2,000) constitutes arrears to be added to the support payable the following year.

You may use the table below to calculate the taxable amount for the current year and to determine the support-payment arrears at the end of the year.

Period	**(A)** Amount received or paid	**(B)** Child support that is non-taxable and non-deductible	**(C)** Spousal support and any other amount payable under the former tax rules
Previous year (arrears)			
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
Total			

Amount taxable or deductible for the current year Subtract the total of the amounts in column B from the total of the amounts in column A. If the result is negative, enter 0. The amount of support taxable or deductible must not exceed the total in column C.
Child-support arrears at the end of the year Subtract the total of the amounts in column A from the total of the amounts in column B. If the result is negative, enter 0.
Spousal-support arrears at the end of the year Subtract the amount taxable or deductible for the current year from the total of the amounts in column C.

3.3 Payments received before the date of the judgment or written agreement

In order for an amount to qualify as a support payment, it must be payable further to a judgment or written agreement. For this reason, as a rule, payments made before the date of the judgment or written agreement do not have to be included in the recipient's income. However, such payments are nevertheless considered to be support payments, provided

- the judgment or written agreement stipulates that the payments are considered to be received further to the judgment or written agreement;
- the payments were made in the year in which the judgment was rendered or the written agreement was entered into, or in the previous year;
- the payments meet the basic criteria set forth in section 3.1.

The date on which the judgment or written agreement providing for the payments is considered to come into effect is the date on which the first of these payments is made.

If the judgment was rendered or the written agreement was entered into in 2000, payments made prior to January 1, 1999, do not meet the requirements to be considered support payments; consequently, they do not have to be included in the recipient's income.

However, payments made in 1999 or 2000 must be included in the recipient's income for the year in which they were received if they meet the conditions listed above and are not subject to the new tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income. If the recipient included the payments in income for the previous year, he or she must ask for an adjustment to the income tax return for that year by filing form TP-1.R-V, *Request for an Adjustment to an Income Tax Return* (this form must be filed **separately** from any income tax return).

Where the judgment is rendered or the written agreement is entered into after April 30, 1997, and **it changes the amount of child support** (that is, the amount differs from the amount payable before May 1, 1997), the revised amount of child support is deemed to have been paid, under the judgment or written agreement, on the day it is be paid for the first time. As of that date, that is, as of the date on which the amount of child support was revised, the support payments are not taxable for the recipient or deductible for the payer. See example 6.

Example 6

Robert and Julie are legally married. They separated on February 1, 1996. Since that date, Robert has been making child-support payments of $500 per month. On October 1, 1998, the couple entered into a written agreement stipulating that amounts paid from January 1, 1997, to October 1, 1998, are deemed to have been paid and received under the agreement. Moreover, this agreement stipulates that as of October 1, 1998, the amount of child-support payments is increased to $750 per month.

The amounts received as support payments from January 1, 1997, to December 31, 1997 (that is, $500 x 12 months = $6,000) must be included in Julie's income for 1997 and may be deducted from Robert's income for 1997. However, the amount of child support payable to Julie as of October 1, 1998, differs from the amount she was receiving before May 1, 1997. The new tax rules concerning child support therefore apply as of the day on which the first payment of the revised amount is to be paid, that is, October 1, 1998.

For 1998, the amount that Julie must include in her income, and that Robert may deduct, is $4,500 ($500 x 9 months). As of October 1, 1998, the child support paid is not taxable for Julie and is not deductible for Robert.

3.4 Payments for specific expenses

In order for an amount to qualify as a taxable support payment (not subject to the new tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income), the recipient must have full discretion as to the use of the amount. This means that the recipient can use the amount as he or she sees fit, without being required to render an account of its use to the payer.

However, **payments for specific expenses** or **payments for specific expenses that are made to a third party are considered to be payments receivable by the recipient and payable by the payer as an allowance paid on a periodic basis that can be used by the recipient as he or she sees fit** (regardless of whether the amounts are actually paid on a periodic basis), provided all of the following conditions are met:

- The judgment or written agreement stipulates that these payments must be included in the recipient's income under section 313.0.1 of the *Taxation Act*. It also stipulates that the payments may be deducted from the payer's income pursuant to section 336.1 of the Act. Where the date of the judgment or written agreement is after June 29, 2000, a reference to subsection 56.1(2) and subsection 60.1(2) of the *Income Tax Act* (Statutes of Canada) (instead of to section 313.0.1 and section 336.1 of the *Taxation Act*) is acceptable, unless the judgment or agreement stipulates that the reference is not applicable under the *Taxation Act*.
- The payments became payable in the year, with respect to expenses incurred in the year or in the previous year, under a judgment or written agreement.
- The expenses were incurred for the maintenance of the recipient, the maintenance of a child in the recipient's custody, or the maintenance of both the recipient and the child.

It is not necessary for the exact amount of the payments to be stipulated in the judgment or written agreement. Payments are considered fixed and predetermined if the document in question provides sufficient indications for the amount to be determined. For example, a written agreement that refers to a mortgage on a particular building, or to tuition fees charged by the educational institution attended by a child of the recipient, contains sufficient indications for the payment made in this respect to be considered an **allowance payable on a periodic basis**.

It should be noted that **payments made to cover specific expenses** are amounts paid directly to the recipient, or amounts paid on the recipient's behalf to a third party for specific expenses.

Specific expenses include expenses incurred for

- services (such as child care, courses, etc.);
- rent, property taxes, electrical bills, insurance premiums, telephone bills, etc.;
- the rental of corporeal property.

Specific expenses do not include

- expenses related to the self-contained domestic establishment occupied by the payer of support;
- expenses incurred to acquire corporeal property, other than the following types of expenses, which are considered specific expenses:·
  - medical expenses (prescription drugs, eyeglasses, an orthopedic device, a wheelchair, orthodontic expenses, etc.);
  - educational expenses (books, school supplies, etc.);
  - amounts paid to maintain a self-contained domestic establishment occupied by the recipient of support;
  - amounts paid to acquire or improve a self-contained domestic establishment occupied by the recipient of support, up to 20% of the initial principal of all loans made in order to acquire or improve the dwelling.

If you are subject to the new tax rules concerning child support, payments made to a third party are taxable for the recipient and deductible for the payer only if, in addition to meeting the basic criteria for support payments, the following conditions are met:

- All of the non-taxable and non-deductible child support has been paid for the current year and previous years.
- The judgment or written agreement clearly stipulates that payments made to a third party are made solely for the maintenance of the payer's spouse or former spouse, or the father or mother of the payer's child.

The recipient is not considered to have full discretion as to the use of the support payment if the payment is provided for in a judgment rendered or a written agreement entered into after March 27, 1986, but before January 1, 1988.

3.5 Payments received by a child

If a judgment or written agreement stipulates that an amount is to be paid to a child, the amount is not included in the recipient's income nor in the child's income. Such a payment is not an allowance within the meaning of the *Taxation Act*, since the recipient is not free to use it as he or she sees fit.

However, such an amount must be included in the recipient's income if the judgment was rendered or the written agreement was entered into after March 27, 1986, but before January 1, 1988, and if the child was in the custody of the recipient. In this case, the payment is considered to have been made to and received by the recipient.

The term "child in the custody of the recipient" refers to

- a child who is a minor; or
- a child of full age who is covered by the rules of the *Civil Code of Québec* relative to the protective supervision of persons of full age, and who has been entrusted to the custody of the recipient.

If a judgment or written agreement stipulates that support is to be paid to the recipient for the benefit of a child and that the support is taxable, the recipient must continue to include the support payments in his or her income, even if the child has reached full age since the date of the judgment or written agreement, and even if, in actual fact, the payments are made directly to the child. The terms of the judgment or written agreement may be varied only by a new judgment or written agreement.

3.6 Arrears

Where a single payment is made to cover arrears, this single payment is considered a **periodic payment**. However, a single payment is not considered a periodic payment if the payment is made to release the payer from all past and future liability with respect to support, if the payment is made as a result of a compromise or if the payment is made to pay amounts due for a period prior to the date of the judgment or written agreement.

If you are **not subject to the new tax rules concerning child support**, you must include the support-payment arrears in your income for the year in which they were received.

If you are **subject to the new tax rules concerning child support**, you must consider any support-payment arrears to be paid first to cover any non-taxable support payments and then to cover taxable support payments. This means that you do not have to include any amount for support payments in your income until all of the non-taxable support payments due for the period have been made.

When recording the arrears you received for a given year, you must take into account the following rules:

- The arrears are first applied to the payment of non-taxable support (starting, as a rule, with the debt for the earliest period).
- The balance of the arrears is then applied to the payment of taxable support (starting, as a rule, with the debt for the earliest period).

Complete work chart 142 of the income tax return to determine the taxable amount to be entered on line 142 of your income tax return.

You may ask Revenu Québec to determine whether it is to your advantage to have the portion of the arrears applicable to previous years deducted from your income for the current year; if it is to your advantage, Revenu Québec will make a **tax adjustment** on line 402 of your income tax return. You may request the averaging of support-payment arrears if the amount entered on line 142 of your income tax return is $300 or more. Complete form TP-766.2-V, *Averaging of a Retroactive Payment, Support-Payment Arrears or a Repayment of Support*.

To determine the amount of arrears that may give rise to a tax adjustment, subtract the taxable support that you received for the current taxation year from the amount entered on line 5 of work chart 142.

Also complete the table in section 3.2.3 to calculate support-payment arrears owing at the end of the year.

3.7 Lump-sum payments

In order to qualify as support payments, the payments must be made on a periodic basis. Lump-sum payments are therefore not generally taxable.

The following payments are considered **lump-sum payments** even if the amount is paid in several instalments:

- a lump-sum payment that releases the payer, in whole or in part, from the obligation to pay support or the obligations under a matrimonial regime, or that represents a waiver of the benefits under a marriage contract;

- a lump-sum payment made further to a judgment or written agreement for a period prior to the date of the judgment or agreement;
- a payment made in several instalments that allows for the accumulation of a substantial capital amount over a short period.

Where periodic payments required under a judgment or a written agreement were not made on time, and a single payment is made in order to fulfil the obligations concerned, this single payment is not considered a lump-sum payment, but rather a periodic payment, and must be treated as arrears, unless the payment is made to release the payer from all past and future liability with respect to support (see section 3.6).

If the payments made for the maintenance of the recipient or the children of the recipient are considerably more than normal maintenance requirements, or if the payments are made at intervals of more than one year, they are not likely to be considered an allowance payable on a periodic basis, regardless of the terms of the judgment or written agreement. Such payments are more likely to be considered instalments of a lump-sum payment.

Where a judgment or written agreement provides for the regular payment of a given amount over a limited period of time, it is important to determine whether the amount is a lump-sum payment or an allowance payable on a periodic basis. (See Chapter 2 for a definition of "allowance" and "payable on a periodic basis.")

3.8 Repayment of support

If, further to a judgment, you repaid, during the year or one of the two previous years, an amount of support included in your income for the year or a previous year, you may deduct all or part of the amount on line 250 of your income tax return, provided you did not deduct the amount in a previous return and provided an adjustment was not previously made with respect to the amount. However, this measure **does not apply** to a repayment of support payments that were not included in your income because they constituted non-taxable child support; **nor** does it apply to a repayment provided for under a written agreement that has not yet been confirmed by a judgment.

If the portion of the repayment attributable to previous years is $300 or more, **also** enter that portion on line 276 of your income tax return. Check box 404 of your return, and enclose with your return form TP-766.2-V, *Averaging of a Retroactive Payment, Support-Payment Arrears or a Repayment of Support.* Revenu Québec will calculate a **tax adjustment** that may reduce your income tax payable for the year.

3.9 Support payments received from a non-resident

You must include in your income any amounts you receive from a resident of another country if the amounts meet the basic criteria to qualify as support payments, provided the new tax rules concerning child support do not apply. You may claim a deduction respecting these amounts on line 297 of your income tax return if the country concerned has concluded a tax treaty or agreement with Canada or Québec, under which support payments are not subject to federal or Québec income tax. However, if the amounts received are non-taxable child support, you do not include the payments in your income and cannot claim a deduction on line 297 of your income tax return.

Moreover, if you paid income tax to a foreign country or a political subdivision of a foreign country with respect to support payments that must be included in your income, you may be able to claim a foreign tax credit (see line 409 of the income tax return).

4 Payers of support

If you made support payments, you may report the amounts on line 225 of your income tax return, provided the basic criteria described in section 4.1 are met. However, **if you are subject to the tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income**, you must complete work chart 225 (the work charts are grouped together after the schedules included with the income tax return) in order to determine the amount to enter on line 225.

To find out whether these tax rules concerning child support apply to you, refer to section 4.2.

4.1 Basic criteria used to determine whether amounts paid constitute support payments

- Where you are the recipient's spouse or former spouse, the support is payable under a judgment or written agreement.
- The amounts constitute an allowance payable on a periodic basis (see the definitions in Chapter 2) for the benefit of the recipient, for the benefit of the recipient's children or for the benefit of the recipient and his or her children and the recipient has full discretion as to the use of the amount (the latter requirement does not apply to an amount payable further to a judgment rendered or a written agreement entered into after March 27, 1986, but before January 1, 1988).
- At the time the payment is made, you and the recipient are living apart (in the case of taxation years before 1997, you and the recipient must have been living apart both at the time of payment and throughout the remainder of the year).
- Where you are the recipient's spouse or former spouse, you and the recipient were living apart because of the breakdown of your relationship.
- Where you and the recipient are not spouses or former spouses but are the biological parents of the child for whose maintenance the support is paid, the support is payable under a judgment rendered by a competent tribunal.

4.2 Tax treatment of child support

Under tax measures that came into effect on May 1, 1997, child-support payments made further to a judgment rendered or a written agreement entered into after April 30, 1997, are not deductible from the payer's income and do not have to be included in the recipient's income.

The new tax rules apply only to child-support payments. If you pay support payments **solely** for the maintenance of your spouse or former spouse, and no support payments are made for the maintenance of your children, you may deduct the total amount of support from your income. However, if you pay support **solely** for the maintenance of your children, or for the maintenance of your spouse or former spouse as well as that of your children, read the following information.

Since May 1, 1997, judges have been required to clearly specify in their judgments which portion of the support payment is for the benefit of a child and which portion is for the benefit of the spouse or former spouse. The same rule applies to written agreements.

Where the judgment or written agreement does not specify the amount awarded solely for the benefit of the spouse, the total amount is deemed to be child support. Amounts paid to a third party for specific expenses are also deemed to be child support. For example, where the judgment or written agreement provides for the payment of certain expenses directly to a third party and it is not clearly indicated which expenses are made for the benefit of the spouse, all of the amounts are considered to be child support. Therefore, unless the amounts intended for child support and for spousal support are clearly specified, all of the support received is considered child support, and is not deductible.

4.2.1 Judgment rendered or written agreement entered into after April 30, 1997

Child support that you paid after April 30, 1997, further to a judgment rendered or a written agreement entered into after April 30, 1997, may not be deducted from your income.

Child-support payments are neither taxable for the recipient nor deductible for the payer as of the date on which the judgment is rendered or the written agreement is entered into, provided the date is after April 30, 1997.

4.2.2 Judgment rendered or written agreement entered into before May 1, 1997

Child support paid further to a judgment rendered or a written agreement entered into before May 1, 1997, may be deducted from your income except in the following situations:

(a) The judgment or written agreement stipulates that child-support payments received as of a particular date that is after April 30, 1997, do not have to be included in the recipient's income and are not deductible from the payer's income.

The date as of which the child-support payments are neither taxable for the recipient nor deductible for the payer is the date specified in the judgment or written agreement, provided the date is after April 30, 1997.

(b) The judgment or written agreement was varied after April 30, 1997, in order to increase or decrease the amount of child support payable. As a rule, such a variation is made where there is a motion for revision of support, or where an addendum is to be integrated into a written agreement. If the motion is granted or the addendum is accepted, the revised amount of child support will no longer be taxable for the recipient or deductible for the payer. (The child-support payments continue to be deductible for you if the motion or addendum is refused.)

    The date as of which child-support payments are neither taxable for the recipient nor deductible for the payer is the date on which the first payment of the revised amount of child support is required to be made.

(c) A new judgment or agreement (dated after April 30, 1997) increases or decreases the total amount payable as child support. This generally occurs in one of the following situations:
    - A written agreement entered into before May 1, 1997, is confirmed by a judgment rendered after April 30, 1997.
    - A written agreement entered into before May 1, 1997, is replaced by a written agreement entered into after April 30, 1997.
    - A judgment rendered before May 1, 1997, respecting interim relief is replaced by a divorce decree granted or a judgment of separation from bed and board rendered after April 30, 1997.
    - A judgment of separation from bed and board rendered before May 1, 1997, is replaced by a divorce decree granted after April 30, 1997.
    - A judgment of separation from bed and board or a divorce decree granted before May 1, 1997, or a motion for revision of support accepted before May 1, 1997, is appealed and the appeal court decision is rendered after April 30, 1997.

    In all these cases, the rules under which child support is not taxable for the recipient or deductible for the payer apply only if the total amount of child support payable under a judgment rendered or a written agreement entered into after April 30, 1997, is different from the total amount of child support that was payable under the judgment rendered or written agreement entered into before May 1, 1997. If the total amount of child support does not change, the payer may continue to deduct the child-support payments from his or her income.

    The date as of which the child-support payments are neither taxable for the recipient nor deductible for the payer is the date of the judgment rendered or written agreement entered into after April 30, 1997, that changes the total amount of child support. See examples 1 to 3 in section 3.2.2.

(d) The judgment was rendered or the written agreement was entered into before May 1, 1997, but the recipient and the payer make a joint election on form TP-312-V, *Election Concerning Child Support*, so that child support will not be taxable or deductible as of a date subsequent to April 30, 1997.

    The date as of which child-support payments are neither taxable for the recipient nor deductible for the payer is the date specified by the recipient and the payer on form TP-312-V, provided the date is after April 30, 1997. The election may be made without it being necessary to vary the judgment that was rendered or the written agreement that was entered into before May 1, 1997. (**This means that the amounts payable as support are not changed**.) **Once the election is made, the parties involved cannot revert to the former tax measures**. See example 4 in section 3.2.2.

4.2.3 Order in which support payments are considered to have been made

Under the current tax rules, child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income. Child-support payments subject to these rules are considered to have been received before any child support payable for previous periods and before any spousal support.

This means that, when child support and spousal support are both payable at the end of a calendar year, all the payments made during the year are considered to have been paid first as child support. Consequently, in order to be entitled to a deduction respecting spousal support, you must first make all of your child-support payments for the current year and previous years.

If you are subject to the tax rules under which child-support payments are not included in the recipient's income and cannot be deducted from the payer's income, you must **complete work chart 225** of the income tax return.

If the child support is not paid in full before the end of the taxation year, the arrears respecting this child support or respecting spousal support are added to the support payable for the following year. Once the child support payable for the current year and previous years has been paid in full, any excess amount is considered to be spousal support; it is taxable for the recipient and deductible for the payer. See example 5 in section 3.2.3.

You may use the table in section 3.2.3 to calculate the deductible amount for the current year and to determine the arrears at the end of the year.

4.3 Payments made before the date of the judgment or written agreement

In order for an amount to qualify as a support payment, it must be payable further to a judgment or written agreement. For this reason, as a rule, payments made before the date of the judgment or written agreement cannot be deducted from the payer's income. However, such payments are nevertheless considered to be support payments, provided

- the judgment or written agreement stipulates that the payments are considered to be received further to the judgment or written agreement;
- the payments were made in the year in which the judgment was rendered or the written agreement was entered into, or in the previous year;
- the payments meet the basic criteria set forth in section 4.1.

The date on which the judgment or written agreement providing for the payments is considered to come into effect is the date on which the first of these payments is made.

If the judgment was rendered or the written agreement was entered into in 2000, payments made prior to January 1, 1999, do not meet the requirements to be considered support payments; consequently, they cannot be deducted from the payer's income.

However, payments made in 1999 or 2000 can be deducted from the payer's income for the year in which they were paid if they meet the conditions listed above and are not subject to the new tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income. If the payer deducted the payments from income for the previous year, he or she must ask for an adjustment to the income tax return for that year by filing form TP-1.R-V, *Request for an Adjustment to an Income Tax Return* (this form must be filed **separately** from any income tax return).

Where the judgment is rendered or the written agreement is entered into after April 30, 1997, and **it changes the amount of child support** (that is, the amount differs from the amount payable before May 1, 1997), the revised amount of child support is deemed to have been paid, under the judgment or written agreement, on the day it is be paid for the first time. As of that date, that is, as of the date on which the amount of child support was revised, the support payments are not taxable for the recipient or deductible for the payer. See example 6 in section 3.3.

4.4 Payments for specific expenses

In order for an amount to qualify as a taxable support payment (not subject to the new tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income), the recipient must have full discretion as to the use of the amount. This means that the recipient can use the amount as he or she sees fit, without being required to render an account of its use to the payer.

However, **payments for specific expenses** or **payments for specific expenses that are made to a third party are considered to be payments receivable by the recipient and payable by the payer as an allowance paid on a periodic basis that can be used by the recipient as he or she sees fit** (regardless of whether the amounts are actually paid on a periodic basis), provided all of the following conditions are met:

- The judgment or written agreement stipulates that these payments must be included in the recipient's income under section 313.0.1 of the *Taxation Act*. It also stipulates that the payments may be deducted from the payer's income pursuant to section 336.1 of the Act. Where the date of the judgment or written agreement is after June 29, 2000, a reference to subsection 56.1(2) and subsection 60.1(2) of the *Income Tax Act* (Statutes of Canada) (instead of to section 313.0.1 and section 336.1 of the *Taxation Act*) is acceptable, unless the judgment or agreement stipulates that the reference is not applicable under the *Taxation Act*.
- The payments became payable in the year, with respect to expenses incurred in the year or in the previous year, under a judgment or written agreement.
- The expenses were incurred for the maintenance of the recipient, the maintenance of a child in the recipient's custody, or the maintenance of both the recipient and the child.

It is not necessary for the exact amount of the payments to be stipulated in the judgment or written agreement. Payments are considered fixed and predetermined if the document in question provides sufficient indications for the amount to be determined. For example, a written agreement that refers to a mortgage on a particular building, or to tuition fees charged by the educational institution attended by a child of the recipient, contains sufficient indications for the payment made in this respect to be considered an **allowance payable on a periodic basis**.

It should be noted that **payments made to cover specific expenses** are amounts paid directly to the recipient, or amounts paid on the recipient's behalf to a third party for specific expenses.

Specific expenses include expenses incurred for

- services (such as child care, courses, etc.);
- rent, property taxes, electrical bills, insurance premiums, telephone bills, etc.;
- the rental of corporeal property.

Specific expenses do not include

- expenses related to the self-contained domestic establishment occupied by the payer of support;
- expenses incurred to acquire corporeal property, other than the following types of expenses which are considered specific expenses:
  - medical expenses (prescription drugs, eyeglasses, an orthopedic device, a wheelchair, orthodontic expenses, etc.);
  - educational expenses (books, school supplies, etc.);
  - amounts paid to maintain a self-contained domestic establishment occupied by the recipient of support;
  - amounts paid to acquire or improve a self-contained domestic establishment occupied by the recipient of support, up to 20% of the initial principal of all loans made in order to acquire or improve the dwelling.

If you are subject to the new tax rules concerning child support, payments made to a third party are deductible only if, in addition to the basic criteria for support payments, the following conditions are met:

- All of the non-taxable and non-deductible child support has been paid for the current year and previous years.
- The judgment or written agreement clearly stipulates that payments made to a third party are made solely for the maintenance of the payer's spouse or former spouse, or the father or mother of the payer's child.

The recipient is not considered to have full discretion as to the use of the support payment if the payment is provided for in a judgment rendered or a written agreement entered into after March 27, 1986, but before January 1, 1988.

4.5 Payments made to a child

If a judgment or written agreement stipulates that an amount is to be paid to a child, the amount cannot be deducted from the payer's income. Such a payment is not an allowance within the meaning of the *Taxation Act*, since the recipient is not free to use it as he or she sees fit.

However, such an amount may be deducted from the payer's income if the judgment was rendered or the written agreement was entered into after March 27, 1986, but before January 1, 1988, and if the child was in the custody of the recipient. In this case, the payment is considered to have been made to and received by the recipient.

The term "child in the custody of the recipient" refers to

- a child who is a minor; or
- a child of full age who is covered by the rules of the *Civil Code of Québec* relative to the protective supervision of persons of full age, and who has been entrusted to the custody of the recipient.

If a judgment or written agreement stipulates that support for the benefit of a child is to be paid to the recipient and that the support is taxable for the recipient and deductible for the payer, the payer may continue to deduct the support payments from his or her income, even if the child has reached full age since the date of the judgment or written agreement, and even if, in actual fact, the payments are made directly to the child. The terms of the judgment or written agreement may be varied only by a new judgment or written agreement.

4.6 Arrears

Where a single payment is made to cover arrears, this single payment is considered a **periodic payment**. However, a single payment is not considered a periodic payment if the payment is made to release the payer from all past and future liability with respect to support, if the payment is made as a result of a compromise or if the payment is made to pay amounts due for a period prior to the date of the judgment or written agreement.

If you are **not subject to the new tax rules concerning child support**, you may deduct the support-payment arrears from your income for the year in which they were made.

If you are **subject to the new tax rules concerning child support**, you must consider any support-payment arrears to be paid first to cover any non-taxable support payments and then to cover taxable support payments. This means that you may not deduct any amount for support payments from your income until all of the non-taxable support payments due for the period have been made.

When recording arrears you paid for a given year, you must take into account the following rules:

- The arrears are first applied to the payment of non-taxable support (starting, as a rule, with the debt for the earliest period).
- The balance of the arrears is then applied to the payment of taxable support (starting, as a rule, with the debt for the earliest period).

Complete work chart 225 of the income tax return to determine the taxable amount to be entered on line 225 of your return.

If the support-payment arrears you pay give entitlement to a deduction and the portion of the arrears attributable to previous years is $300 or more, complete form TP-766.2-V, *Averaging of a Retroactive Payment, Support-Payment Arrears or a Repayment of Support*, and attach it to your income tax return. Revenu Québec will calculate for you a **tax adjustment** that may reduce your income tax for the year.

To determine the amount of arrears that may give rise to a tax adjustment, subtract the deductible support that you paid for the current taxation year from the amount entered on line 5 of work chart 225.

Also complete the table in section 3.2.3 to calculate support-payment arrears owing at the end of the year.

4.7 Lump-sum payments

In order to qualify as support payments, the payments must be made on a periodic basis. Lump-sum payments are therefore not generally deductible.

The following payments are considered **lump-sum payments** even if the amount is paid in several instalments:

- a lump-sum payment that releases the payer, in whole or in part, from the obligation to pay support or the obligations under a matrimonial regime, or that represents a waiver of the benefits under a marriage contract;
- a lump-sum payment made further to a judgment or written agreement for a period prior to the date of the judgment or agreement;
- a payment made in several instalments that allows for the accumulation of a substantial capital amount over a short period.

Where periodic payments required under a written agreement or a judgment were not made on time, and a single payment is made in order to fulfil the obligations concerned, this single payment is not considered a lump-sum payment, but rather a periodic payment, and must be treated as arrears, unless it is made to release the payer from all past and future liability with respect to support (see section 4.6).

If the payments made for the maintenance of the recipient or children of the recipient are considerably more than normal maintenance requirements, or if the payments are made at intervals of more than one year, they are not likely to be considered an allowance paid on a periodic basis, regardless of the terms of the judgment or written agreement. Such payments are more likely to be considered instalments of a lump-sum payment.

Where a judgment or written agreement provides for the regular payment of a given amount over a limited period of time, it is important to determine whether the amount is a lump-sum payment or an allowance payable on a periodic basis. (See Chapter 2 for a definition of "allowance" and "payable on a periodic basis.")

4.8 Repayment of support

If, further to a judgment, you received a repayment of support payments made in a previous year, and if you are claiming or previously claimed a deduction on line 225 of your income tax return in respect of the support payments made, you must enter the amount of the repayment on line 142 of your return for the year. However, this measure **does not apply** to a repayment of non-deductible child support; **nor** does it apply to a repayment provided for under a written agreement that has not yet been confirmed by a judgment.

You may ask Revenu Québec to determine whether it is to your advantage to have the portion of the repayment applicable to previous years deducted from your income for the current year; if it is to your advantage, Revenu Québec will make a **tax adjustment**. To make this request, check box 404 of your income tax return, and enclose form TP-766.2-V, *Averaging of a Retroactive Payment, Support-Payment Arrears or a Repayment of Support.*

4.9 Proof of payment

If you made support payments, you must enclose proof of payment with your income tax return, **unless the payments were made to Revenu Québec**. You must also enclose a copy of the document under which you are required to make such payments (the written agreement or the judgment rendered or varied by a court), if you have not already done so.

5 The support-payment collection program

The support-payment collection program was introduced under the *Act to facilitate the payment of support*. The Act applies to all judgments rendered in Québec on or after December 1, 1995, that award support for the first time, and in certain cases to judgments rendered before December 1, 1995 (see below). The judgments must be rendered under the *Civil Code of Québec* or the *Divorce Act* (Statutes of Canada). Judgments handed down outside Québec are also subject to the Act if they are enforceable in Québec.

The support-payment collection program also applies to judgments rendered before December 1, 1995, in the following situations:

- The parties to the judgment (the payer and the recipient) file a joint application to be subject to the support-payment collection program. Such applications must be addressed to the clerk of the court in the district in which the judgment awarding support was rendered, or to the clerk of the court in the district where the person receiving support resides.
- It has been ascertained that a support payment has not been made when due, and the person to whom the payment was to be made files an application with the clerk of the Superior Court.
- On May 16, 1996, the collection of the support was in the hands of the collector of support of the Ministère de la Justice.

Persons who pay or receive support under a judgment rendered before December 1, 1995, do not become subject to the support-payment collection program simply because they apply to the court for a revision of the amount of support, in order to take advantage of the **tax rules under which child support is not taxable for the recipient or deductible for the payer (these rules came into effect on May 1, 1997).**

Under the support-payment collection program, Revenu Québec collects the support payments from the person required to pay support ("debtor of support") and remits an amount twice a month to the person entitled to support ("creditor of support").

However, the Act also allows persons subject to the support-payment collection program to apply, if they wish, for an exemption, that is, to receive or pay support without the intervention of Revenu Québec. For further information, see section 5.1 opposite.

5.1 Exemption

A court may exempt the debtor of support from the obligation of remitting support payments to Revenu Québec if one of the following conditions is met:

- The two parties concerned (the debtor of support and the creditor of support) agree to make a joint application for exemption and, within 30 days after the judgment is rendered, the debtor of support provides Revenu Québec with sufficient security to guarantee support payments for one month. Before granting the exemption, the court must be convinced that the parties have given free and enlightened consent.
- The debtor of support establishes a trust guaranteeing payment of support.

If the exemption is granted, the debtor of support is not required to remit the support to Revenu Québec; support payments are made directly to the creditor of support.

The exemption ceases to apply if one of the following situations arises:

- The creditor of support advises Revenu Québec (by registered or certified mail) that support has not been paid.
- The two parties (the debtor of support and the creditor of support) make a joint application, by registered or certified mail, to terminate the exemption.
- The debtor of support fails to establish a trust or provide security to Revenu Québec within 30 days following the date of the judgment, or fails to maintain the security.

The exemption ceases to apply as soon as Revenu Québec ascertains that support has not been paid. The debtor of support must then make the support payments to Revenu Québec, and is not entitled to a new exemption in the future.

Further information about the exemption is contained in the folder *Application for Exemption* (IN-900-V) and in the brochure *The Collection of Support Payments* (IN-901-V).

The court may allow the debtor of support to make payments directly to the creditor of support for a **period not exceeding four months**, from the time the judgment is rendered until Revenu Québec takes charge of the file.

Proof of payments made must be retained for presentation on request.

5.2 Two methods of collecting support payments

Revenu Québec may collect support using either of the following methods:

1. deduction at source;
2. payment order.

5.2.1 Deduction at source

Where the debtor of support receives an amount, such as a salary, on a regular and periodic basis, Revenu Québec collects the support payments through source deductions. A notice is sent advising the employer that support payments are to be deducted from the income of the employee (debtor of support). The employer must withhold the amounts indicated on the notice as long as the debtor remains an employee and is required to pay support. A copy of the notice is also sent to the debtor.

Source deductions can be made with respect to the following amounts:

- salary, wages or other remuneration;
- fees or advances on remuneration, fees or profits;
- benefits granted by law under a pension plan or benefit plan;
- disability benefits paid under a health or accident insurance plan;
- amounts paid under a deferred profit-sharing plan;
- retiring allowances and severance pay;
- payments of an annuity constituted by contract, judgment or will, including an annuity issued by an insurer.

Revenu Québec determines the amount that will be deducted at source on the basis of the support payments (and, if applicable, the arrears and charges) that the debtor is required to pay. The amount withheld may not exceed 50% of the gross amount paid to the debtor.

For further information on source deductions, refer to the brochure *Source Deductions and Employers* (IN-902-V).

5.2.2 Payment order

Revenu Québec sends the debtor a payment order if he or she is in one of the following situations:

- The debtor earns no amount from which support payments can be deducted at source. For example, the debtor is self-employed.
- The amount deducted at source is too low to cover the amount of support payable.
- The support payments should normally be deducted at source, but the debtor asks Revenu Québec if payment orders can be used instead. Revenu Québec will not accept such a request if there are any support payments in arrears.

Where this method is used to collect support, the debtor of support must provide Revenu Québec with sufficient **security** to guarantee support payments for **one month**. Security must be provided throughout the time that the payment-order method is used.

5.3 Payment of support

Revenu Québec pays the support (including arrears, if applicable) collected from the debtor of support to the creditor of support on the 1st and 16th of each month. Payments can be made by cheque or direct deposit. Creditors of support wishing to have support payments deposited directly in their bank account must complete form EN-900.QM-V, *Request for Direct Deposit of Support Payments*.

Under certain circumstances, Revenu Québec may advance to the creditor of support sums of money to stand in lieu of support payments; if this is done, the amount paid **may not exceed $1,500 over a maximum of three months**. These sums are paid on behalf of the debtor of support and may be recovered from the debtor or, if applicable, from the person who makes the source deductions (the employer, for example). However, the creditor may have to repay such sums if the support payable is reduced or cancelled retroactively, or if arrears are reduced or cancelled.

For further information, refer to the brochure *The Collection of Support Payments* (IN-901-V).

6 Judicial or extrajudicial expenses

You may deduct, on line 250 of the income tax return, the judicial or extrajudicial expenses you paid

- to obtain a decision regarding your initial right to receive (or your initial obligation to pay) support;
- to revise your right to receive (or your obligation to pay) support;
- to collect the support.

However, such amounts are not deductible unless **all** of the following conditions are met:

- The expenses were paid for support payments that you were required to include in your income (on line 142 of your income tax return) or could deduct from your income (on line 225 of your income tax return), or for non-taxable or non-deductible payments.
- You were not reimbursed for the amounts.
- You are not entitled to be reimbursed for the amounts.
- You did not deduct the amounts in an income tax return for a previous year.

You may not deduct expenses incurred in order to obtain a divorce or separation.

7 Reconciliation of spouses

If you and your spouse or former spouse resumed living together during a year, the payments made in the year, **before you resumed living together**, may be deducted from the payer's income and must be included in the recipient's income for that year, provided they meet the basic criteria (see section 3.1) to qualify as support payments and the new tax rules under which child-support payments do not have to be included in the recipient's income and cannot be deducted from the payer's income do not apply (see section 3.2).

If, after you have resumed living together, another separation occurs, consult the latest version of interpretation bulletin IMP. 336-2 for the tax consequences resulting from the new separation.

The *Source Deductions Return* (form TP-1015.3-V) enables employers to determine the deduction code applicable to each employee and thereby calculate the amount of Québec income tax to withhold from salaries and wages. If you submitted this form to your employer before your separation, you will have to complete and submit another copy of the form, to ensure that certain amounts used by your employer to calculate source deductions of Québec income tax are taken into account, in accordance with your new situation. Form TP-1015.3-V must be completed within 15 days after an event that results in a reduction of the amounts indicated on your last TP-1015.3-V form.

If you are an **employee**, and you receive support payments that you **must include in your income**, you may request that an additional amount of income tax be withheld from your salary or wages, in order to avoid having a balance payable when you file your income tax return. If you wish to exercise this option, you must submit to your employer a duly completed copy of form TP-1017-V*, Request to Have Additional Income Tax Withheld at Source*, or form TP-1015.3-V, *Source Deductions Return.*

On the other hand, if you are an **employee who is required to make periodic payments of support**, and if these payments are **deductible from your income**, you must submit to your employer a duly completed copy of form TP-1015.3-V, *Source Deductions Return,* in order to obtain a reduction in your source deductions of income tax.

If, pursuant to the *Act to facilitate the payment of support,* or pursuant to a court order (seizure by garnishment), your employer is required to collect support payments by withholding an amount from your salary or wages, you must also complete form TP-1015.3-V in order to obtain a reduction in your source deductions of income tax.

Judgment rendered or written agreement entered into after April 30, 1997

Child-support payments made under a judgment rendered or a written agreement entered into after April 30, 1997, are not deductible from the payer's income. Consequently, an application for a reduction in source deductions of income tax may not be submitted with respect to such payments.

However, it is possible to file such an application if you paid **spousal support** (support paid solely for the benefit of your spouse or former spouse), because such payments continue to be deductible from the payer's income. Simply submit to your employer a duly completed copy of form TP-1015.3-V, *Source Deductions Return,* in order to obtain a reduction in your source deductions of income tax.

8.1 Amount for a single-parent family

You may enter $1,380 in column 1 on line 19 of Schedule A of your income tax return if, following your separation, you maintained **at some time in the year**, alone or with another person, a self-contained domestic establishment in which you and a dependent child ordinarily lived, and if, at that time, you met **both** of the following conditions:

- You did not have a spouse (or, if you did have a spouse, you were not living with your spouse, and were neither supporting your spouse nor being supported by him or her). If you made support payments for the benefit of your spouse that entitle you to a deduction (line 225 of the income tax return), you are not considered to have been supporting your spouse.
- You were not living in a conjugal relationship with anyone else.

However, you are not entitled to the amount for a single-parent family if you claimed an amount on line 440 of your income tax return as credits transferred from one spouse to the other.

8.2. Amount respecting dependent children or other dependants

You may, under certain conditions, claim an amount respecting a dependent child for whose benefit you made support payments, provided you were required to make the payments for part of the year only. To determine the amount you may claim on line 367 of your income tax return, consult the income tax guide.

8.3 Tax credit for child-care expenses

Expenses for child care give entitlement to a **refundable** tax credit on line 455 of the income tax return. This credit can be shared with the other person supporting the child, provided that person was **your spouse on December 31** (see the definition in Chapter 2) of the year concerned.

The child-care expenses must have been paid to allow you or the other person supporting the child

- to carry out the duties of an office or employment;
- to actively carry on a business;
- to practise a profession;
- to carry out research or similar work for which you or the other person supporting the child (as applicable) received a grant;
- to actively seek employment;

- to attend certain educational institutions on a full-time basis (that is, to be enrolled in an educational program of at least three consecutive weeks, in which the student must devote at least 10 hours per week to courses or assignments related to the program); or
- to attend certain educational institutions on a part-time basis (that is, to be enrolled in an educational program of at least three consecutive weeks, in which the student must devote at least 12 hours per month to courses related to the program).

In order to claim the refundable tax credit for child-care expenses, you must complete Schedule C of the income tax return.

Other person supporting the child

The "other person supporting the child" may be

- the mother or father of the child;
- your spouse or de facto spouse (see the definition in Chapter 2); or
- the person claiming an amount with respect to the child on line 367 of his or her income tax return.

In order to be considered the other person supporting the child, the person **must have lived with you** at some time in the year covered by your income tax return and at some time in the first 60 days of the following year.

If you separated from your spouse in the year covered by your income tax return, and you and your former spouse have not resumed living together, **or** you resumed living together only after the first 60 days of the following year, he or she is **not considered to be the other person supporting the child** for the year in which the separation took place. Consequently, you may claim a refundable tax credit for the child-care expenses you paid during the year, while the child was living with you.

However, if you were separated from your spouse on December 31 of the year concerned because of the breakdown of the relationship, but the period of separation lasted less than 90 days, you are deemed to have had a spouse on December 31. You must therefore take into account your spouse's annual income (line 275 of his or her return) when determining family income in Part F of Schedule C of your return.

If you separated from your spouse in the year covered by your income tax return, and you and your spouse resumed living together before the end of the year, **or** if you had a new spouse on December 31 of the year in question, you must include, in Part F of Schedule C, the income for the year of the person who was your spouse on December 31. This person will also be considered the **other person supporting the child**.

If, on December 31 of the year covered by your income tax return, you were separated from your spouse because of the breakdown of your relationship, and if your separation lasted 90 days or more but you and your spouse resumed living together in the first 60 days of the following year, your spouse is considered to be the **other person supporting the child**. However, you are not considered to have had a spouse on December 31, and you should not enter the person's income for the year in Part F of Schedule C of the income tax return.

If, after the separation, you and your former spouse shared custody of the child, your former spouse is not considered to be the other person supporting the child.

9 Transfers of property and contributions to an RRSP

9.1 Transfers of property

Where an individual (the transferor) transfers property, directly or indirectly, to his or her spouse, or to a person who subsequently becomes his or her spouse, both the transferee and the transferor may be liable for certain amounts of income tax that the transferor alone would otherwise have had to pay.

However, the transferor is not liable for income tax on income from the transferred property (or property substituted for the transferred property) if the income is attributable to the period during which the transferor and the transferee were living apart further to the breakdown of their relationship. Similarly, the transferor is not liable for income tax on a capital gain resulting from the disposition of the transferred property (or property substituted for it) if the disposition took place at a time when the transferor and the transferee were living apart further to the breakdown of their relationship.

For further information, consult the brochure *Capital Gains and Losses* (IN-120-V).

9.2 Contributions to an RRSP

As a rule, if an individual makes contributions or transfers certain amounts to his or her spouse's registered retirement savings plan (RRSP), and if the spouse withdraws amounts from the plan, the individual may be required to include, in his or her income for the year of the withdrawal, the amount withdrawn by the spouse. The maximum amount to be included in the individual's income is the total of the contributions he or she made to the RRSP during the year of the withdrawal and the previous two years.

This measure does not apply if, at the time of the withdrawal, the persons concerned are living apart because of the breakdown of their relationship. This means that if, following a divorce or separation, your former spouse withdraws amounts from an RRSP of which he or she is the annuitant and to which you contributed, the amounts withdrawn must be included in his or her income.

9.3 Division of the family patrimony

Amounts that spouses accumulate in RRSPs during their marriage are part of the family patrimony. The value of such RRSPs must be divided in the event of a divorce or judicial separation, or if the marriage is annulled. Where, following the partition of the family patrimony, one of the spouses withdraws all or a portion of the amounts accumulated in his or her RRSP, the amounts withdrawn must be included in his or her income.

It is not the division of amounts accumulated in an RRSP that has tax consequences, but rather the withdrawal of the amounts obtained as a result of the partition of the family patrimony.

9.4 Transfers of funds held in an RRSP or a RRIF

An individual may transfer funds from his or her registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) to the RRSP or RRIF of his or her spouse or former spouse, without the transferred amount being subject to income tax, if all of the following conditions are met:

- The transfer is made, further to a judgment or a written agreement, in order to divide the property between the transferor and his or her spouse or former spouse.
- The property is divided in settlement of rights arising out of their relationship, or out of the breakdown of their relationship.
- Where the property in an RRSP is transferred, the transferor and his or her spouse or former spouse are living apart at the time of the transfer.

Such transfers must be made directly between the issuers of the plans concerned. In this case, the transferred amount need not be reported in the income tax return of the transferor or in that of his or her spouse or former spouse.

9.5 Transfers of funds held in an RPP

An individual may transfer a single payment from his or her registered pension plan (RPP) to the RPP, RRSP or RRIF of his or her spouse or former spouse, without the transferred amount being subject to income tax, provided the first two conditions listed in section 9.4 are fulfilled.

Such transfers must be made directly by the administrator of the individual's RPP to the administrator of the other RPP, the issuer of the RRSP, or the issuer of the RRIF. In this case, the amount transferred need not be reported in the income tax return of the transferor or in that of his or her spouse or former spouse.

More offices to serve you better

Gatineau
170, rue de l'Hôtel-de-Ville, 6e étage
Gatineau (Québec) J8X 4C2
(819) 770-1768 or 1 800 267-6299

Jonquière
2154, rue Deschênes
Jonquière (Québec) G7S 2A9
(418) 548-4322 or 1 800 267-6299

Laval
4, Place-Laval, bureau RC-150
Laval (Québec) H7N 5Y3
(450) 972-3320 or 1 866 540-2500

Longueuil
Place-Longueuil
825, rue Saint-Laurent Ouest
Longueuil (Québec) J4K 5K5
(450) 928-8820 or 1 866 490-2500

Montréal
- Complexe Desjardins
  C. P. 3000, succursale Desjardins
  Montréal (Québec) H5B 1A4
  (514) 873-2600 or 1 866 440-2500
- Village Olympique, pyramide Est
  5199, rue Sherbrooke Est, bureau 4000
  Montréal (Québec) H1T 4C2
  (514) 873-2610 or 1 866 460-2500
- Les Galeries Saint-Laurent
  2215, boulevard Marcel-Laurin
  Saint-Laurent (Québec) H4R 1K4
  (514) 873-6120 or 1 866 570-2500

Québec
200, rue Dorchester
Québec (Québec) G1K 5Z1
(418) 659-6299 or 1 800 267-6299

Rimouski
212, avenue Belzile, bureau 250
Rimouski (Québec) G5L 3C3
(418) 727-3572 or 1 800 267-6299

Rouyn-Noranda
19, rue Perreault Ouest, RC
Rouyn-Noranda (Québec) J9X 6N5
(819) 764-6761 or 1 800 267-6299

Saint-Jean-sur-Richelieu
855, boulevard Industriel
Saint-Jean-sur-Richelieu (Québec) J3B 7Y7
(450) 349-1120 or 1 866 470-2500

Sainte-Foy
3800, rue de Marly
Sainte-Foy (Québec) G1X 4A5
(418) 659-6299 or 1 800 267-6299

Sept-Îles
391, avenue Brochu, bureau 1.04
Sept-Îles (Québec) G4R 4S7
(418) 968-0203 or 1 800 267-6299

Sherbrooke
2665, rue King Ouest, 4e étage
Sherbrooke (Québec) J1L 2H5
(819) 563-3034 or 1 800 267-6299

Sorel-Tracy
101, rue du Roi
Sorel-Tracy (Québec) J3P 4N1
(450) 928-8820 or 1 866 490-2500

Trois-Rivières
225, rue des Forges, bureau 400
Trois-Rivières (Québec) G9A 2G7
(819) 379-5360 or 1 800 267-6299

I-2004-08

Information service for persons with a hearing impairment
Montréal: 873-4455 Elsewhere in Canada: 1 800 361-3795

We invite you to visit our Web site at www.revenu.gouv.qc.ca.

Revenu Québec

IN-128-V (2005-04)