

NEW CONDITIONS GOVERNING THE ATTRIBUTION OF THE REFUNDABLE TAX CREDIT GRANTING AN ALLOWANCE TO FAMILIES RESULTING FROM THE ABOLITION OF THE FINANCIAL CONTRIBUTION FOR THE PLACEMENT OF MINOR CHILDREN

Established in 1974 by the Ministère de la Santé et des Services sociaux (MSSS), the financial contribution for the placement of minor children (hereinafter referred to as the “FCP”) sought to financially empower parents whose child was subject to sheltering in an alternative living environment.

In a report published in 2013,¹ the Québec Ombudsman opined that the regulation² and the policy governing the management of the contribution should be revised to eliminate certain inconsistencies and unfairness.

Since the report’s publication, the MSSS and the government departments and bodies concerned with the problems that the Québec Ombudsman raised have conducted analyses to pinpoint solutions to attain the objectives established while complying with the legislative framework stipulated by the *Civil Code of Québec* concerning the parents’ support obligation to their children.

Accordingly, in conjunction with Budget Speech 2021-2022, the Québec government announced that the obligation to pay the FCP would be abolished on September 1, 2021.³ Since the payment of the refundable tax credit granting an allowance to families (hereinafter referred to as the “family allowance”⁴) is closely linked to the payment of the FCP in the case of children placed pursuant to the enabling legislation⁵ (each statute can hereinafter be referred to as “the act”), the *Taxation Act* must be adjusted to simultaneously modify the conditions governing the attribution of the family allowance.⁶

¹ Québec Ombudsman, *Report on the financial contribution towards the placement of children under age 18*, March 2013 [online].

[<https://protecteurducitoyen.qc.ca/en/investigations/special-reports/the-quebec-ombudsman-s-report-on-parents-financial-contribution-towards-the-placement-of-their-child-under-government-charge-summary>].

² *Regulation respecting the application of the Act respecting health services and social services for Cree Native persons* (CQLR, chapter S-5, r. 1).

³ Ministère des Finances du Québec, *Budget 2021-2022 – Budget Plan*, March 25, 2021, pages E.23-E.25.

⁴ The refundable tax credit granting an allowance to families has replaced since January 1, 2019 the refundable tax credit for child assistance. Since 2005, the latter tax credit provided financial assistance to families to enable them to meet the needs of their children under 18 years of age. The refundable tax credit granting an allowance to families comprises the family allowance, the supplement for handicapped children, the supplement for handicapped children requiring exceptional care, and the supplement for the purchase of school supplies, the latter introduced in 2017.

⁵ At present, placements of children are possible, by way of an example, pursuant to the *Youth Protection Act* (CQLR, chapter P- 34.1), the *Act respecting health services and social services* (CQLR, chapter S- 4.2), the *Act respecting health services and social services for Cree Native persons* (CQLR, chapter S- 5.1), and the *Youth Criminal Justice Act* (S.C. 2002, c. 1).

⁶ For greater clarity, the new conditions governing attribution will not apply to the supplement for handicapped children requiring exceptional care since it is not paid in the case of a severely handicapped children who is placed or sheltered. Moreover, for the application of this information bulletin, any reference to the expression “family allowance” also refers to the supplement for handicapped children and the supplement for the purchase of school supplies, depending on the circumstances.

□ New conditions governing the attribution of the family allowance

The existing provisions in the *Taxation Act* stipulate that when a child is sheltered or placed by an integrated health and social services centre (CISSS) or an integrated university health and social services centre (CIUSSS) (formerly a youth centre), the parents can continue to receive the family allowance, only when the FCP demanded by the CISSS or the CIUSSS is paid.

Since the MSSS has taken the necessary steps to abolish the FCP on September 1, 2021,⁷ it follows that the new conditions governing the attribution of the family allowance for the parents of children sheltered in an alternative living environment must be introduced into the tax legislation to concomitantly and in a coordinated manner recognize the abolition of the FCP.

Accordingly, the changes to the tax provisions pertaining to the FCP will stipulate:

- the cessation of the payment of the family allowance to parents whose child is subject to a placement order until he is of full age, since the government will no longer demand a financial contribution from the parents and relinquishes this debt with respect to them;
- the maintenance of the payment of the family allowance for parents whose child is subject to temporary placement⁸, which is stipulated to promote the child's return to the family home despite the government's no longer demanding any financial contribution from the parents;
- the payment of the family allowance to parents whose child is subject to temporary placement but who were unable to pay the FCP and therefore not previously eligible for it, provided that the other criteria that make them eligible are met.

To implement the new conditions governing the attribution of the family allowance, changes must more specifically be made to the notions of “eligible dependent child” and “eligible individual” stipulated in the tax legislation.⁹

■ Notion of an “eligible dependent child”

For the application of the family allowance, the *Taxation Act* now stipulates that a person under 18 years of age who is sheltered or placed pursuant to the act cannot qualify as an “eligible dependent child,” unless the conditions are met pertaining to the contribution payable pursuant to the *Regulation respecting the application of the Act respecting health services and social services for Cree Native persons*, i.e., that the contribution for the person's shelter or placement has been paid.

⁷ See the draft regulation amending the *Regulation respecting the contribution of users taken in charge by family-type resources or by intermediate resources* and the *Regulation respecting the application of the Act respecting health services and social services for Cree Native persons*, published in the *Gazette officielle du Québec* on April 28, 2021.

⁸ For the purposes of the information bulletin, a placement is considered to be temporary when the return in family's home can be expected and no placement order is in force.

⁹ *Taxation Act*, section 1029.8.61.8.

Given that, in light of the new Québec legal context, the payment of the FCP will no longer be demanded in the case of children sheltered or placed pursuant to the act, the definition of the expression “eligible dependent child” stipulated in the *Taxation Act*, for the application of the family allowance, will be modified so as to only exclude children under 18 years of age subject to a placement order in an alternative living environment until they become of full age according to the conclusions of a judgment delivered pursuant to the *Youth Protection Act*.¹⁰

For greater clarity, starting from the date of application stipulated in this information bulletin, children sheltered or placed pursuant to the act whose parents paid the FCP for their shelter and who are not subject to such a placement order until they reach full age according to a judgment delivered pursuant to the *Youth Protection Act* will continue to qualify as “eligible dependent children” for the application of the family allowance provided that the other criteria that qualify them in this respect continue to be met.

In the same way, starting from the date of application stipulated in this information bulletin, children sheltered or placed pursuant to the act whose parents did not pay the FCP and who are not subject to a placement order until they reach full age according to a judgment delivered pursuant to the *Youth Protection Act* can qualify as “eligible dependent children” and give rise to entitlement to the family allowance provided that the other criteria stipulated in the *Taxation Act* are met.

■ Notion of an “eligible individual”

An eligible individual, for the application of the family allowance, in respect of an eligible dependent child, is usually the child’s father or mother. The individual must reside with the child to be eligible to receive the family allowance in respect of the child.

To facilitate the administration by Retraite Québec of the family allowance in the case of children sheltered or placed pursuant to the act, the notion of an “eligible individual” must be clarified.

Thus, when, at any time, an individual does not reside with an eligible dependent child because the child is sheltered or placed pursuant to the act, the individual will be deemed to reside with the child if he resided with him when the shelter or the placement became effective pursuant to the act, provided that the other criteria allowing him to qualify in this respect were satisfied at that time.

Moreover, if no individual qualifies as an eligible individual when the dependent child’s shelter or placement became effective pursuant to the act, a person who has a relationship with the child will be deemed to reside with him, provided that the other criteria allowing him to qualify in this respect are satisfied.

■ Consequential amendment

At present, when the family allowance has no longer been payable for 12 months or less because the FCP has not been paid to the CISSS or the CIUSSS, depending on the circumstances, the receipt by Retraite Québec of information on the resumption of the payment of the FCP or the conclusion of the sheltering or the placement are equivalent to applying to receive the family allowance.

¹⁰ CQLR, chapter P-34.1.

Consequently, the family allowance and, where applicable, the supplement for handicapped children and the supplement for the purchase of school supplies are paid to the beneficiary registered in the file starting in the month following the resumption of the payment of the FCP or starting in the month following the conclusion of the sheltering or the placement, depending on the circumstances, provided that all the eligibility conditions are met.

In view of the abolition of the FCP, the exemption from submitting a new application when the payment of this financial contribution resumes within 12 months must be withdrawn.¹¹

Consequently, the *Taxation Act* will be amended to introduce a transitional provision stipulating that the eligible individuals covered by the exemption from an application at the time of the planned abolition of the FCP on September 1, 2021 will be deemed to have submitted an application for the family allowance so that the payments thereof resume starting in the month following that date, provided, depending on the circumstances, that the child's sheltering is still temporary or that the sheltering or the placement have ended and provided, upon verification, that such individuals meet the eligibility conditions respecting the family allowance.

❑ **Application date**

The amendments to be made to the *Taxation Act* described in this information bulletin will be applicable on the same date as that on which the abolition of the FCP takes effect, which is planned for September 1, 2021.

In the meantime, the requisite agreements covering the transmission of information necessary to Retraite Québec to establish entitlement to the family allowance according to the new conditions governing the attribution of the family allowance will be reviewed accordingly.

To obtain information on the matters dealt with in this information bulletin, contact the Secteur du droit fiscal, de l'optimisation des revenus et des politiques locales et autochtones at secteurdroitfiscaletdelafiscalite@finances.gouv.qc.ca.

The English and French versions of this information bulletin are available on the Ministère des Finances website at www.finances.gouv.qc.ca.

¹¹ *Taxation Act*, section 1029.8.61.24.