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REVIEW OF THE TAX ASSISTANCE GRANTED TO PERSONS WHO OPT FOR ASSISTED PROCREATION TO BECOME PARENTS

This information bulletin is intended to make public the various changes that will be made to the refundable tax credit for the treatment of infertility, the tax credit for medical expenses and the tax credit for expenses relating to medical care further to the tabling of Bill 20, *Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation*.

For information concerning the matters dealt with in this information bulletin, contact the Direction des communications at 418 528-9323.

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REVIEW OF THE TAX ASSISTANCE GRANTED TO PERSONS WHO OPT FOR ASSISTED PROCREATION TO BECOME PARENTS

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Review of the tax assistance granted to persons who opt for assisted procreation to become parents

Persons who, to start a family or have another child, have recourse to certain medical techniques have been able to receive tax assistance, through the refundable tax credit for the treatment of infertility, since 2000.

Further to the deployment in August 2010 of the Québec Assisted Reproduction Program, which offers all medical procedures related to artificial insemination and three cycles of in vitro fertilization free of charge, the tax credit is intended to offset a portion of in vitro fertilization treatments that are not covered by a public health insurance plan, provided the treatments are carried out in compliance with the standards set by the Québec government to ensure quality, safe and ethical practice.

Currently, the amount of the tax credit that may be claimed by an individual who opts for assisted procreation to become a parent can reach \$10 000 a year and represent 50% of eligible expenses paid in a year, up to \$20 000.

On June 6, 2014, the Health and Welfare Commissioner published an opinion on assisted procreation activities in Québec, in which he made 12 recommendations to ensure better supervision of the Québec Assisted Reproduction Program, improve the benefits of the program and better administer public funds.¹

Reacting to the opinion, the Minister of Health and Social Services introduced in the National Assembly Bill 20, *Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation*, hereinafter called “Bill 20.”

The bill, which takes into account a number of the Health and Welfare Commissioner’s recommendations concerning the supervision of clinical activities related to assisted procreation, also terminates coverage, under the Québec Health Insurance Plan, of services related to in vitro fertilization activities.

Consequently, to ensure that in vitro fertilization treatments remain financially accessible, the tax assistance granted through the refundable tax credit for the treatment of infertility will be restructured.

In addition, to take into account the new standards that will apply to in vitro fertilization activities after Bill 20 was assented to, various changes will be made to the expenses eligible for the refundable tax credit for the treatment of infertility, the tax credit for medical expenses and the tax credit for expenses relating to medical care.

1 The detailed advisory report (in French) and summary advisory are available on the website of the Health and Welfare Commissioner, at www.csbe.gouv.qc.ca.

1. RESTRUCTURING OF THE ASSISTANCE GRANTED THROUGH THE REFUNDABLE TAX CREDIT FOR THE TREATMENT OF INFERTILITY

Respecting expenses incurred after the date of assent to Bill 20, new eligibility conditions for the refundable tax credit for the treatment of infertility will be introduced to restrict financial assistance to persons who do not have children and who did not choose voluntary sterilization for contraceptive purposes.

In addition, the method of calculating the tax credit, the application of which will subsequently be limited to a maximum number of in vitro fertilization cycles, will be reviewed so that the tax credit is determined on the basis of the financial capacity of households and maintains access to in vitro fertilization services once they have been de-insured.

Briefly, respecting eligible expenses incurred after the date of assent to Bill 20, the tax credit will offset, in the case of couples with a family income of \$50 000 or less, 80% of the expenses paid in a year, up to \$20 000.

For couples with a family income over \$50 000, the tax credit rate will be gradually decreased, reaching 20% in the case of family income over \$120 000.

In the case of a person living alone, the 80% rate will apply to income of \$25 000 or less, while the rate will decrease to 20% respecting income over \$60 000.

Low- and middle-income households will be able to apply for advance payments of the tax credit to help them pay the fees that will henceforth be charged by centres for assisted procreation.

The list of expenses eligible for the tax credit will be reviewed to ensure that tax assistance is not provided with respect to expenses paid for treatment that may not with the standards established in Bill 20.

1.1 Determination of the tax credit

The tax legislation will be amended to provide that an individual, other than an excluded individual,² who is resident in Québec at the end of December 31 of a year³ is entitled, as of the 2015 taxation year, to a refundable tax credit equal to the aggregate of the following amounts:

- the lesser of \$10 000 and an amount representing 50% of pre-existing expenses paid in the year by the individual;

2 An individual is excluded if the individual or the individual's spouse is exempt from tax for the year under section 982 or 983 of the *Taxation Act* (CQLR, chapter I-3) or under any of subparagraphs *a* to *d* and *f* of the first paragraph of section 96 of the *Tax Administration Act* (CQLR, chapter A-6.002).

3 For the purposes of the tax credit, an individual who was resident in Québec immediately before the individual's death is deemed to be resident in Québec at the end of December 31 of the year of the individual's death.

- the product obtained by multiplying the rate determined for the year regarding the individual by the amount by which the lesser of \$20 000 and the eligible expenses paid in the year by the individual exceeds the portion of the expenses that are pre-existing expenses, if the following conditions are met:
 - neither the individual nor the person who is the other party to the parental project has a child before the commencement of the in vitro fertilization treatment for which the expenses are paid,
 - a physician certifies that neither the individual nor the person who is the other party to the parental project underwent surgical sterilization by vasectomy or tubal ligation, as applicable, other than for strictly medical reasons.

However, individuals who have a parental project will be able to claim the tax credit for eligible expenses incurred after the date of assent to Bill 20 only if the expenses are attributable to one and the same in vitro fertilization cycle, in the case of a woman 36 years of age or under, and to no more than the same two in vitro fertilization cycles, in the case of a woman 37 years of age or over.

Moreover, where eligible expenses for the same parental project are paid by more than one individual, the total eligible expenses that may be taken into account in the calculation of the tax credit that may be claimed by each of the individuals for a particular taxation year may not exceed the amount of eligible expenses that could be taken into account for the year if only one of the individuals paid all of the expenses. If there is no agreement between the individuals, the Minister will determine the amount of eligible expenses each of them may take into account.

☐ Pre-existing expenses

Pre-existing expenses are eligible expenses that were incurred before the date that follows the date of assent to Bill 20, with respect to an in vitro fertilization treatment that, at the time the expenses were incurred, was a non-insured in vitro fertilization treatment.

☐ Rate determined

The rate determined for the year regarding an individual will be the rate associated with the individual's family income bracket for the year according to the rate table for the refundable tax credit for the treatment of infertility applicable to the individual for the year.

The tables for determining the rate an individual must use in the calculation of the refundable tax credit for the treatment of infertility are given in Appendix 1.

An individual who has an eligible spouse for the year must use the rate table for the refundable tax credit for the treatment of infertility applicable to persons living as a couple. An individual who does not have an eligible spouse for the year must use the rate table for the refundable tax credit for the treatment of infertility applicable to persons living alone.

■ Eligible spouse

The eligible spouse of an individual for a particular taxation year is the person who is the individual's eligible spouse for the year for the purposes of the transfer to the spouse of the unused portion of non-refundable tax credits.

In general, for the purposes of the transfer, the eligible spouse of an individual for a particular year is the person who is the individual's spouse at the end of the year and who, at that time, is not living separate and apart from the individual or, where the individual does not have a spouse at the end of the year, the last person who was the individual's spouse during the year, if that person died during the year and, at the time of death, was the individual's spouse and was not living separate and apart from the individual.

For greater clarity, a person is not considered to be living separate and apart from an individual at a particular time unless the person has been living separate and apart from the individual at that time, because of a breakdown of their union, for a period of at least 90 days that includes that time.

■ Family income

The family income of an individual for a particular taxation year is the income of the individual for the year and, as applicable, that of the individual's eligible spouse for the year.

However, where an individual goes bankrupt during a particular calendar year, the rule that the bankrupt's taxation year is deemed to begin on the date of the bankruptcy and the current taxation year is deemed to end the day before that date will not apply for the purposes of determining the individual's family income for the year.

In addition, where an individual is not resident in Canada throughout a particular year, the individual's income for that year will be deemed to be equal to the income that would have been determined in the individual's regard had the individual been resident in Québec and Canada throughout the year or, if the individual dies during the year, throughout the period of the year before the individual's death.

■ Indexation

Each of the family income brackets in the rate tables for the refundable tax credit for the treatment of infertility will be automatically indexed each year, as of January 1, 2016.

As with the indexation of the main parameters of the personal income tax system, the index used will correspond to the percentage change in the overall average Québec consumer price index without alcoholic beverages and tobacco products (QCPI-WAT) for the 12-month period ending on September 30 of the year preceding the one for which an amount is to be indexed, compared to the average QCPI-WAT for the 12-month period that ended on September 30 of the year prior to the year preceding the one for which an amount is to be indexed.

This index will be applied, for a particular year, to the previous year's value of the amounts subject to indexation. For greater clarity, if the result obtained by applying the index to a particular amount is not a multiple of 1, it will be adjusted to the nearest multiple of 1 or, if it is equidistant from two multiples of 1, to the nearest higher multiple of 1.

1.2 Expenses eligible for the tax credit

Expenses paid by an individual after December 31, 2014 for in vitro fertilization treatment in order to enable the individual or a person participating with the individual in assisted procreation to have a child will be considered expenses eligible for the tax credit only if they are paid for:

- an in vitro fertilization activity carried out in a centre for assisted procreation that holds a licence issued in accordance with the *Act respecting clinical and research activities relating to assisted procreation*,⁴ excluding:
 - a preimplantation genetic diagnosis activity which does not aim solely to identify serious monogenic diseases or chromosomal abnormalities,
 - an in vitro fertilization activity carried out with respect to a woman under the age of 18 or over the age of 42, where the activity is carried out after the six-month period following the date of assent to Bill 20;
- expenses relating to a psychosocial assessment of a person forming the parental project referred in section 10.2 of the *Act respecting clinical and research activities relating to assisted procreation*, as introduced by Bill 20, where such an assessment is required to begin or continue in vitro fertilization treatment;
- drugs relating to an in vitro fertilization activity, if the following conditions are met:
 - they can be legally acquired for use by a person only if they are prescribed by a physician,
 - they are not covered by an insurance plan,
 - their purchase is registered by a pharmacist;
- travel expenses described in paragraph *h* or *i* of section 752.0.11.1 of the *Taxation Act*,⁵
- reasonable travel and lodging expenses of a particular person and, if the particular person cannot travel without assistance, of the person who accompanies the particular person for in vitro fertilization treatment at a centre for assisted procreation located in Québec, where there is no centre for assisted procreation in Québec within a radius of less than 250 kilometres from the locality in Québec where the particular person lives, provided a physician certifies compliance with these conditions.

4 CQLR, chapter A-5.01.

5 Briefly, paragraph *h* of section 752.0.11.1 of the *Taxation Act* concerns expenses paid to a person engaged in the business of providing transportation services between the locality where a person undergoing in vitro fertilization treatment dwells and the centre for assisted procreation, if the centre is not less than 40 km from the locality. Paragraph *i* of section 752.0.11.1 of the *Taxation Act* concerns reasonable travel expenses, other than expenses described in paragraph *h*, incurred in respect of a particular person to obtain medical or paramedical services in a place that is not less than 80 km from the locality where the particular person dwells, if the route travelled was the most reasonably direct route.

In addition, to be considered eligible expenses, expenses must be paid for a non-insured in vitro fertilization treatment that meets the following conditions:

- if an individual or the other party to the parental project has not begun in vitro fertilization activities before the day following that of the assent to Bill 20, no in vitro fertilization activity may be carried out respecting a woman under the age of 18 or over the age of 42;
- a single embryo is transferred or, in accordance with the decision of a physician having considered the quality of the embryos:
 - a maximum of two embryos are transferred, in the case of a woman 36 years of age or under, or three embryos including no more than two blastocysts, in the case of a woman 37 years of age or over, where the transfer is carried out not later than the date of assent to Bill 20, or
 - a maximum of two embryos are transferred, in the case of a woman 37 years of age or over, where the transfer is carried out after the date of assent to Bill 20.

To this end, a non-insured in vitro fertilization treatment refers to a treatment in respect of which no cost for in vitro fertilization activities is paid on behalf of a person undergoing the treatment, or for which the person may not be reimbursed, by the administrator of a universal health insurance plan.

For the purposes of this definition, a universal health insurance plan means a plan that is:

- a plan constituted under a statute of a province or territory establishing a health insurance plan that is a health care insurance plan within the meaning of the *Canada Health Act*⁶ or a plan constituted under a statute of another legislative authority establishing a public health insurance plan; or
- a plan established by the Government of Canada that provides for health insurance protection for the members of the Canadian Forces.

Moreover, the requirement that a centre for assisted procreation hold a licence issued in accordance with the *Act respecting clinical and research activities relating to assisted procreation* will not apply if the centre for assisted procreation is located outside Québec and, where an individual or the individual's spouse begins in vitro fertilization activities after December 31, 2014, the person who began the activities lives outside Québec at the time the expenses are incurred.

6 Within the meaning of the *Canada Health Act* (R.S.C., 1985, c. C-6), a health care insurance plan means a plan established by the law of a province or territory to provide for insured health services, that is, hospital services, physician services and surgical-dental services provided to insured persons, but does not include any health services that a person is entitled to and eligible for under any other Act of Parliament or under any Act of the legislature of a province that relates to workers' or workmen's compensation.

For the purposes of determining the expenses eligible for the tax credit, a person will be considered to have begun in vitro fertilization activities if the person is in one of the following situations:

- the person herself received the services required for the purpose of retrieval of eggs or ovarian tissue;
- the person undergoing assisted procreation with her received, as applicable, the services required for the purpose of sperm extraction by medical intervention or the services required for the purpose of retrieval of eggs or ovarian tissue.

1.3 Advance payments of the tax credit

On application by an individual who believes that, for a taxation year subsequent to the 2014 taxation year, he or she is entitled to the refundable tax credit for the treatment of infertility, the Minister may pay in advance part of the tax credit if he is convinced that the following conditions are met:

- the individual is resident in Québec at the time the application is made;
- the individual paid the eligible expenses, other than pre-existing expenses, and filed a receipt confirming their payment;
- the individual's estimated family income for the year does not exceed \$97 458, where the individual lives as a couple, and \$48 729, where the individual lives alone;⁷
- the amount of the tax credit to which the individual believes he or she is entitled for the year exceeds \$2 000;
- the individual agrees that the advance payments be made by direct deposit in a bank account held at a financial institution whose name appears in Part I of Appendix I to Rule D4 – Institution Numbers and Clearing Agency/Representative Arrangements of the Automated Clearing Settlement System Rules Manual of the Canadian Payments Association.

The application for advance payments of the tax credit must be made on a prescribed form and include all documents and information deemed necessary by the Minister for his assessment.

For a particular taxation year, the application must be made not later than December 1 of the year.

Where, at the time of the application, an individual is the spouse of a person who believes that he or she is also entitled to the tax credit for the year, only one of them may submit an application for advance payments to the Minister.

⁷ For greater clarity, the amounts of \$97 458 and \$48 729 will be automatically indexed each year, as of January 1, 2016, in accordance with the same rules as those applicable to the indexation of the family income brackets of the rate tables for the refundable tax credit for the treatment of infertility.

The Minister may decline to act on the application of an individual to obtain, for a particular year, advance payments of the tax credit if the individual or the individual's spouse, as the case may be, received advance payments of the tax credit for a year prior to the particular year and has still not filed, at the time of processing the application, his or her tax return for the previous year despite the fact that the time limit for filing the return has expired.

In addition, the Minister may cease to make advance payments to an individual, suspend such payments or reduce their amount where information or documents brought to his attention so warrant.

□ Amount of advance payments

The maximum amount the Minister may pay to an individual in the form of advance payments for a particular taxation year will be established by applying to eligible expenses, other than pre-existing expenses, paid by the individual in the year, the rate associated with the individual's estimated family income bracket for the year according to the advance-payment rate table applicable to the individual for the year.

The tables that will be used in determining the amount of advance payments of the tax credit are given in Appendix 2.

For an individual who is part of a couple at the time of the application, the amount of the advance payment will be determined using the table of rates for the purposes of advance payments of the refundable tax credit for the treatment of infertility for persons living as a couple. Otherwise, the table used will be that of the rates for the purposes of advance payments of the refundable tax credit for the treatment of infertility for persons living alone.

Each of the family income brackets in the rate tables for the purposes of advance payments of the refundable tax credit for the treatment of infertility will be automatically indexed each year, as of January 1, 2016, in accordance with the same rules as those applicable to the indexation of the family income brackets of the rate tables for the refundable tax credit for the treatment of infertility.

□ Advance payments deemed to be income tax payable

An individual will be required to pay, for a particular taxation year, income tax equal to the aggregate of the amounts received for that year as advance payments of the refundable tax credit for the treatment of infertility.

The income tax will be payable not later than April 30 of the year following the particular taxation year, unless the individual died after October 31 of the particular taxation year and before May 1 of the following year, in which case the income tax will be payable not later than the day that is six months after the individual's death.

In addition, where, for a particular taxation year, the Minister pays an amount as advance payments of the tax credit to the individual, the individual and the person who, for the year, is the individual's eligible spouse will be solidarily liable for the payment of the related income tax on receipt of the amount.

2. RESTRICTIONS ON THE TAX CREDIT FOR MEDICAL EXPENSES AND THE TAX CREDIT FOR EXPENSES RELATING TO MEDICAL CARE

Under the tax system, an individual who pays eligible medical expenses for himself or herself and his or her spouse and dependants may claim a non-refundable tax credit for the portion of the expenses that exceeds 3% of the individual's family income. This portion of eligible medical expenses is converted to a 20% tax credit.

The tax credit for medical expenses concerns a multitude of health care expenses, such as amounts paid to a dentist, a nurse or a practitioner to obtain medical, paramedical or dental services, unless the service is provided for purely cosmetic purposes.

An individual is also entitled to a non-refundable tax credit equal to 20% of the travel and lodging expenses paid by the individual so that he or she, or a dependant, may obtain in Québec medical care that is not available less than 250 kilometres from the individual's place of residence. This measure is intended to provide tax relief to households that must pay certain expenses to obtain specialized medical care available only in major urban centres.

To take into account the new standards that will apply to in vitro fertilization activities following assent to Bill 20, the medical expenses giving rise to the tax credit for medical expenses and the travel and lodging expenses giving rise to the tax credit for expenses relating to medical care will not include expenses paid after December 31, 2014 for in vitro fertilization treatment, if the expenses:

- are taken into account by a person in the calculation of the refundable tax credit for the treatment of infertility for the year in which the expenses are paid;
- are attributable to an in vitro fertilization activity carried out with respect to a woman under the age of 18 or over the age of 42, where the activity is carried out after the six-month period that follows the date of assent to Bill 20;
- are attributable to an in vitro fertilization activity during which more than one embryo is transferred, unless, in accordance with the decision of a physician having considered the quality of the embryos:
 - a maximum of two embryos are transferred, in the case of a woman 36 years of age or under, or three embryos including no more than two blastocysts, in the case of a woman 37 years of age or over, where the transfer is carried out not later than the date of assent to Bill 20, or
 - a maximum of two embryos are transferred, in the case of a woman 37 years of age or over, where the transfer is carried out after the date of assent to Bill 20;
- are attributable to an in vitro fertilization activity carried out in Québec at a centre for assisted procreation that does not hold a licence issued in compliance with the *Act respecting clinical and research activities relating to assisted procreation*.

APPENDIX 1

RATE TABLE FOR THE REFUNDABLE TAX CREDIT FOR THE TREATMENT OF INFERTILITY FOR PERSONS LIVING AS A COUPLE

Family income (\$)			Family income (\$)			Family income (\$)		
Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)
—	50 000	80	73 729	74 915	59	98 644	99 831	38
50 000	51 186	79	74 915	76 102	58	99 831	101 017	37
51 186	52 373	78	76 102	77 288	57	101 017	102 203	36
52 373	53 559	77	77 288	78 475	56	102 203	103 390	35
53 559	54 746	76	78 475	79 661	55	103 390	104 576	34
54 746	55 932	75	79 661	80 847	54	104 576	105 763	33
55 932	57 119	74	80 847	82 034	53	105 763	106 949	32
57 119	58 305	73	82 034	83 220	52	106 949	108 136	31
58 305	59 492	72	83 220	84 407	51	108 136	109 322	30
59 492	60 678	71	84 407	85 593	50	109 322	110 508	29
60 678	61 864	70	85 593	86 780	49	110 508	111 695	28
61 864	63 051	69	86 780	87 966	48	111 695	112 881	27
63 051	64 237	68	87 966	89 153	47	112 881	114 068	26
64 237	65 424	67	89 153	90 339	46	114 068	115 254	25
65 424	66 610	66	90 339	91 525	45	115 254	116 441	24
66 610	67 797	65	91 525	92 712	44	116 441	117 627	23
67 797	68 983	64	92 712	93 898	43	117 627	118 814	22
68 983	70 169	63	93 898	95 085	42	118 814	120 000	21
70 169	71 356	62	95 085	96 271	41	120 000	or over	20
71 356	72 542	61	96 271	97 458	40			
72 542	73 729	60	97 458	98 644	39			

RATE TABLE FOR THE REFUNDABLE TAX CREDIT FOR THE TREATMENT OF INFERTILITY FOR PERSONS LIVING ALONE

Family income (\$)			Family income (\$)			Family income (\$)		
Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)
—	25 000	80	36 864	37 458	59	49 322	49 915	38
25 000	25 593	79	37 458	38 051	58	49 915	50 508	37
25 593	26 186	78	38 051	38 644	57	50 508	51 102	36
26 186	26 780	77	38 644	39 237	56	51 102	51 695	35
26 780	27 373	76	39 237	39 831	55	51 695	52 288	34
27 373	27 966	75	39 831	40 424	54	52 288	52 881	33
27 966	28 559	74	40 424	41 017	53	52 881	53 475	32
28 559	29 153	73	41 017	41 610	52	53 475	54 068	31
29 153	29 746	72	41 610	42 203	51	54 068	54 661	30
29 746	30 339	71	42 203	42 797	50	54 661	55 254	29
30 339	30 932	70	42 797	43 390	49	55 254	55 847	28
30 932	31 525	69	43 390	43 983	48	55 847	56 441	27
31 525	32 119	68	43 983	44 576	47	56 441	57 034	26
32 119	32 712	67	44 576	45 169	46	57 034	57 627	25
32 712	33 305	66	45 169	45 763	45	57 627	58 220	24
33 305	33 898	65	45 763	46 356	44	58 220	58 814	23
33 898	34 492	64	46 356	46 949	43	58 814	59 407	22
34 492	35 085	63	46 949	47 542	42	59 407	60 000	21
35 085	35 678	62	47 542	48 136	41	60 000	or over	20
35 678	36 271	61	48 136	48 729	40			
36 271	36 864	60	48 729	49 322	39			

APPENDIX 2

RATE TABLE FOR THE PURPOSES OF ADVANCE PAYMENTS OF THE REFUNDABLE TAX CREDIT FOR THE TREATMENT OF INFERTILITY FOR PERSONS LIVING AS A COUPLE

Estimated family income (\$)			Estimated family income (\$)			Estimated family income (\$)		
Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)
—	50 000	80	61 864	67 797	65	79 661	85 593	50
50 000	55 932	75	67 797	73 729	60	85 593	91 525	45
55 932	61 864	70	73 729	79 661	55	91 525	97 458	40

RATE TABLE FOR THE PURPOSES OF ADVANCE PAYMENTS OF THE REFUNDABLE TAX CREDIT FOR THE TREATMENT OF INFERTILITY FOR PERSONS LIVING ALONE

Estimated family income (\$)			Estimated family income (\$)			Estimated family income (\$)		
Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)	Over	Without exceeding	Rate (%)
—	25 000	80	30 932	33 898	65	39 831	42 797	50
25 000	27 966	75	33 898	36 864	60	42 797	45 763	45
27 966	30 932	70	36 864	39 831	55	45 763	48 729	40