

Income Tax

LAF. 12.1-1/R2 Recovery Charge
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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), section 12.1

This version of interpretation bulletin LAF. 12.1-1 (formerly LMR. 12.1-1) supersedes the version of March 31, 2005. The interpretation remains the same. Only some style changes were made.

This bulletin explains how the *Tax Administration Act*¹ (TAA) applies with regard to the imposition of a recovery charge.

INTRODUCTION

1. Section 12.1 of the TAA provides for the imposition of a recovery charge in respect of any amount that a person owes under a fiscal law. The recovery charge is calculated at the rate of 10 % on the unpaid balance of the debt at the time the Minister of Revenue takes a recovery measure provided for in a fiscal law, or seeks recourse in a competent court, to collect the debt.
2. The charge is applied only once in respect of a particular debt and cannot be less than \$50 or more than \$10,000. However, it may be imposed more than once on a debtor since such a charge applies every time recovery measures are taken in respect of a new tax debt.

APPLICATION OF THE ACT

3. A recovery charge is imposed on taxpayers or mandataries who fail to pay their tax debts, despite having been duly required to do so. The Minister of Revenue does not take any recovery measure provided for in a fiscal law or seek recourse in a competent court (legal remedy) until after the taxpayers or mandataries have been duly informed of their obligations and of the possible consequences of failing to meet them.
4. The term “recovery measure provided for in a fiscal law” means an administrative remedy used to collect tax debts. Such recovery measures include, for example,

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

- a certificate from the Minister of Revenue attesting the exigibility of the debt and the amount owing (TAA, s. 13);
- a demand by the Minister that a debtor of a taxpayer or mandatary pay the Minister the amount the debtor owes the taxpayer or mandatary, where the latter owes an amount exigible under a fiscal law (TAA, ss. 15-15.3); and
- disposal by the Minister of property detained pursuant to section 16.2 of the TAA (TAA, s. 16.3).

5. Legal remedies used to collect tax debts also give rise to a recovery charge. Such remedies include, for example,

- a Paulian action (*Civil Code of Québec*, arts. 1631 et seq.); and
- the filing of a statement of claim, where it is the first measure taken to collect a tax debt and it was preceded by a demand for payment.

6. The recovery charge provided for in section 12.1 of the TAA applies to “any amount which a person owes under a fiscal law,” that is, to all duties, interest, penalties and other charges. The recovery charge is calculated on the unpaid balance of the debt at the time recovery measures are taken.

WAIVER OR CANCELLATION OF THE CHARGE

7. In accordance with section 94.1 of the TAA, the Minister may waive or cancel, in whole or in part, any charge payable pursuant to section 12.1 of the TAA. The circumstances in which that power may be exercised are described in the current version of the interpretation bulletin relating to said section 94.1.