

Income Tax

LAF. 21.1-1/R1 Time period during which a notice of objection can be notified further to the Minister's refusal to refund an amount claimed

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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), sections 21, 21.1 and 93.1.1 to 93.1.25

This version of interpretation bulletin LAF. 21.1-1 (formerly LMR. 21.1-1) replaces the version of December 28, 1995. The bulletin was updated in view of the legislative amendments that have been made since that date.

This bulletin explains how the *Tax Administration Act*¹ (TAA) applies where the Minister of Revenue has refused to refund an amount claimed under section 21 of the TAA. In addition, it explains when a notice of objection can be notified.

APPLICATION OF THE ACT

1. In accordance with section 21.1 of the TAA, a person who has made an application for a refund under section 21 of the TAA and has received no response from the Minister on or before the day that is 180 days after the date on which the application was mailed may notify a notice of objection in respect of the application. Sections 93.1.1 to 93.1.25 of the TAA then apply, with the necessary modifications.
2. If all or part of the refund is denied, a notice of assessment in respect of the determination of the person's refund is sent to the person, in accordance with section 25 of the TAA.
3. The person may object to the assessment by notifying a notice of objection to the Minister on or before the day that is 90 days after the date on which the notice of assessment determining the refund was sent.
4. However, where, contrary to our general practice, no notice of assessment determining the refund has been sent to the person, the latter may, at any time after the expiry of 180 days following the date on which the application for a refund was mailed, notify a notice of objection to the Minister.

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.

5. To illustrate the foregoing, take the following example: an application for a refund dated July 1, 2012, that was mailed on July 7, 2012.

First scenario

The person receives a notice of assessment dated October 4, 2012, refusing a portion of the amount claimed.

The person may object to the assessment by notifying a notice of objection to the Minister before January 3, 2013, that is, before the expiry of 90 days following the date on which the notice of assessment was sent, which is presumed to be October 4, 2012. According to section 87 of the TAA, the date on which any notice of assessment is sent is presumed to be the date of that notice. Therefore, the time period during which a notice of objection can be notified begins to run on October 4, 2012.

Second scenario

As at January 4, 2013, the Minister has not responded to the application for a refund.

The person may notify a notice of objection at any time, since the Minister did not respond to the application for a refund before the expiry of 180 days following July 7, 2012.

However, if a notice of assessment were sent after January 4, 2013, the person would have 90 days from the date on which the notice of assessment was sent to notify an objection.

6. Finally, an application for a refund will be processed by the Minister only if no assessment has been issued to the person in respect of the transaction for which the refund is claimed.