

Income Tax

LAF. 28-3/R1 Interest on the refund of a penalty at the time of a notice of reassessment
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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), sections 28, 30, 30.2, 31 and 31.1
Taxation Act (CQLR, c. I-3), section 1052

This version of bulletin LAF. 28-3 (formerly LMR. 28-3) replaces the version of October 31, 1994. The bulletin was updated to take into account legislative amendments made since that date. The position set out in the bulletin remains the same.

This bulletin states Revenu Québec's policy regarding the calculation of refund interest on the amount of a penalty that has been paid, for the period from the date the penalty was paid to the date a notice of reassessment is issued.

APPLICATION OF THE ACT

1. According to a well-established principle, the issuance of a notice of reassessment cancels the previous assessment. Consequently, any penalty imposed at the time of the previous assessment is also cancelled. The penalty is deemed to have never existed.
2. A taxpayer who pays a penalty before a reassessment is made is granted a refund of the total amount of the penalty as well as interest on that amount at the rate fixed by section 28 of the *Tax Administration Act*¹ (TAA), pursuant to section 1052 of the *Taxation Act* or section 30 of the TAA.
3. In light of the foregoing, the fact that no penalty is imposed by the notice of reassessment or that a new penalty is greater than or less than the previous penalty is of no importance. In all cases, the taxpayer is granted refund interest on the total amount of the penalty paid. Such interest is calculated from the time the penalty was paid to the date the notice of reassessment is issued.
4. However, where the refund of a penalty has been withheld under section 30.1 of the TAA, no interest is payable on the refund for the period during which the withholding thereof is valid and binding, in accordance with section 30.2 of the TAA.

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. Under section 31 of the TAA, the total amount of the refund of a penalty, plus any interest thereon, may be allocated to pay a debt of the taxpayer that results from the issuance of a notice of reassessment or that is otherwise shown in the registers.

6. In the case of the refund of a penalty relating to the Québec sales tax (QST), the Minister of Revenue, after proceeding with the allocation provided for in section 31 of the TAA, may, pursuant to section 31.1 of the TAA, apply the remainder of the refund to which the person is entitled to the payment of a debt owed by the person under an Act of the Parliament of Canada administered and carried out by the Minister.