

Income Tax

IMP. 1010-2/R3 Waiver to the Application of the Time Limits Provided for in Paragraphs *a*,
a.0.1 and *a.1* of Subsection 2 of Section 1010 of the *Taxation Act*

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Reference(s): *Taxation Act* (R.S.Q., c. I-3), section 1010

This bulletin cancels and replaces bulletin IMP. 1010-2/R2 of November 29, 1991, and has effect from June 17, 1994, in respect of an application for refund relating to taxation year 1985 or a subsequent taxation year.

This bulletin gives the circumstances in which the Minister will issue a notice of assessment after the expiry of the three-year, four-year, six-year and seven-year time limits provided for in paragraphs *a*, *a.0.1* and *a.1* of subsection 2 of section 1010 of the *Taxation Act* (the “Act”), where a taxpayer sends the notice of waiver referred to in subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the Act.

APPLICATION OF THE ACT

1. Paragraphs *a*, *a.0.1* and *a.1* of subsection 2 of section 1010 of the Act respectively provide that the Minister may again assess the tax, interest and penalties within three years, four years, six years or seven years, according to whether he acts by virtue of one or the other of these provisions, after the day of mailing of an original assessment or of a notification that no tax is payable for a taxation year.
2. After the time limits mentioned in article 1 above have expired, the power of the Minister to again assess the tax, interest and penalties is extinguished except in two specific cases provided for in subparagraphs i and ii of paragraph *b* of subsection 2 of section 1010 of the Act.
3. The purpose of subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the Act is to **allow** the Minister to again assess the tax, interest and penalties after the expiry of the time limits mentioned in article 1 above where the taxpayer concerned assents thereto by means of a notice of waiver he sends to the Minister.
4. In light of what precedes, the purpose of subparagraph ii is not to oblige the Minister to act upon a notice of waiver. The power to assess again after the expiry of the time limits mentioned in 1 above is granted by the legislator to the Minister, not to the taxpayer. Furthermore, the legislator

took special care, when granting this power to the Minister, to complement it with a *sine qua non* condition, i.e. to require of the Minister that he first obtain the taxpayer's consent in every case where he wishes to again assess after the expiry of the time limits of three, four, six, or seven years, except, naturally, for taxpayers covered by subparagraph i of paragraph b of subsection 2 of section 1010 of the Act.

5. Thus, since exercise of the discretion provided for in subparagraph ii of paragraph b of subsection 2 of section 1010 of the Act is a prerogative of the Minister, it is not the Minister's intention to systematically reassess every taxpayer who applies for a reduction of his previously-assessed taxes, interest or penalties.

6. Considering the above interpretation, it is therefore up to the Minister, not the taxpayer, to initiate the administrative procedure for obtaining the waiver. The situations which may lead to the procedure for waiver generally occur in the following sequence.

1. The Minister wants to reassess a taxpayer but cannot do so since the time limit therefor has expired.
2. The Minister asks the taxpayer to send him a notice of waiver in prescribed form concerning the elements of the assessment he wishes to modify.
3. If the Minister obtains the waiver requested, he will then be allowed, provided it is still his intention to do so, to reassess the taxpayer.

7. For taxation years 1985 and following, the Minister will follow up, according to the procedure outlined in 6 above, on applications for refund from an individual or a testamentary trust in matters of income tax, real estate tax refund, or real estate taxes for timber producers, despite the expiry of the time limits where such a refund would have been granted, had the application been submitted within the requisite time. Furthermore, if the application for refund modifies the computation of the work income supplement to which the individual was entitled, the Minister will carry out the concordance amendments.

When such an application for refund requires the Minister to increase the assessment of the income tax, interest or penalties for a year in respect of which the time limit to reassess has also expired, the Minister must obtain from the individual or testamentary trust a notice of waiver relative to that other year to be also able to issue a notice of assessment in consequence, in order to follow up on the application for refund by the individual or testamentary trust. The fact of obtaining a notice of waiver relating to the elements of an assessment which the Minister wishes to increase, thus constitutes a condition for the exercise of the discretionary power of the Minister to issue a refund in respect of the year referred to in the application sent to him.

The Minister, though, will not process an application for refund relating to a pre-bankruptcy period that was sent by a bankrupt after obtaining his discharge, or an application for refund made for the purpose of retroactive tax planning.

Neither will the Minister process an application for refund that constitutes an application for increasing a deduction for which the taxpayer had not originally elected to claim the maximum amount allowed. For example, the Minister will not reassess a taxpayer who wishes to increase the

amount he had deducted as capital cost allowance in a year for which the time limit to assess has expired.

8. Except for the cases described in article 7 above, the Minister will indicate his intention of reassessing a taxpayer in accordance with subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the Act only if he **wants** to regularize a situation he himself created or a situation existing for a taxation year in respect of which the Minister still has the power of reassessing and that in order to do so he would have to reassess a taxation year for which all prescribed time limits have expired, were it not for the expiry of the time limits provided by the Act. The Minister will also indicate his intention to reassess a taxpayer where, without the reassessment, he would find himself in a legal deadlock.

It should be stated that the Minister will not consider that a situation is one he himself created where that situation results from the fact that in drawing up an assessment, he reproduced an error contained in a taxpayer's fiscal return.

9. For example, the Minister will reassess a taxpayer in the following circumstances, in accordance with subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the Act:

1. where, because of the time taken by the Minister to process a notice of objection served by a taxpayer in respect of a taxation year, the time limit for again assessing the duties, interest and penalties has expired in respect of another taxation year, and it is necessary to obtain a waiver by the taxpayer to regularize the situation contemplated in the objection;
2. where, by reason of a favourable decision of the Minister in reply to a notice of objection served by a taxpayer, or a final and conclusive decision of a tribunal in a taxpayer's favour, the Minister amends another taxpayer's assessment on the grounds that the other taxpayer is part of the same group assessed as the first taxpayer, were it not for the expiry of the time granted to the Minister by the Act in which to reassess that other taxpayer;
3. where, by reason of the internal administrative time required to issue a reassessment, the time limit granted to the Minister to issue a reassessment has expired and, were it not for this situation, the Minister would vary the assessment; for example, where a taxpayer claims a reduction of an assessment in his respect by the Minister **before** the expiry of the time provided by the Act in respect of the assessment;
4. where the taxpayer was assessed on the basis of evidence in the absence of his fiscal return and, were it not for the expiry of the time granted by the Act to amend that assessment, the Minister, in light of the information supplied by the taxpayer in his fiscal return, would reassess the taxpayer;
5. where the Minister would find himself in a legal deadlock if he did not reassess the tax, interest and penalties after the expiry of the time limit provided for in the Act; for example where a taxpayer makes the application referred to in section 1012 of the Act and the time limits provided for in subsection 2 of section 1010 of the Act expire before the Minister acts upon the application, since, on one hand, the said section 1012 of the Act obliges the Minister to reassess the taxpayer's tax for the year in which the loss may be deferred,

whereas, on the other hand, the expiry of the time limits that allow him to act thusly in respect of that year prevents him from so doing; or, for example, to allow a taxpayer to carry back to a taxation year for which the time limits have expired, an additional amount of loss other than a capital loss which may be deferrable to that year under section 727 of the Act, where such a loss is varied by the Minister following an audit, where an application to determine such a loss has been filed before the time limits in respect of the year in which it is deferrable have expired, and that loss has not yet been subject to a determination as applied for in accordance with section 1006 of the Act, or that, although it was the subject of such a determination, the time period for objecting to the determination has not expired;

6. where, by reason of the application of a tax treaty between Canada and another country sanctioned by a law of the Government of Canada, the Department of National Revenue amends the computation of a taxpayer's income in accordance with such a treaty and, were it not for the expiry of the time limits provided by the Act to do so, the Minister would reassess the latter in accordance with such treaty;
7. where, by reason of a modification to the information contained in a taxpayer's statement, the Minister would reassess the taxpayer on the basis of the modified information, were it not for the expiry of the time limits provided by the Act to do so, on the condition that the taxpayer acts diligently in communicating this modification to the Minister;
8. where, by reason of the exercise of a resolatory clause provided in a contract of sale, the Minister would reassess the taxpayer on the basis of the effects of such a clause which cancels the sale *ab initio*, were it not for the expiry of the time limits provided by the Act to do so, on the condition that the taxpayer acts diligently in communicating this fact to the Minister;
9. where, in double taxation matters, adjustments made by a foreign jurisdiction to the income earned or the tax payable by a taxpayer in that jurisdiction, would lead to a modification of the tax payable by that taxpayer in Québec and the Minister would consequently amend the assessment already established, were it not for the expiry of the time limits provided by the Act in respect of that assessment. The taxpayer must act diligently in communicating this fact to the Minister.
10. where, by reason of the rules for exempting new corporations, provided in sections 771.1 and following of the Act, the Minister would reassess the taxpayer, were it not for the expiry of the time limits provided by the Act to do so;
11. more generally speaking, where a taxpayer establishes the existence of a fact or an event that was not known or that could not be submitted because of an act of God before the expiry of the time limits provided for in subsection 2 of section 1010 of the Act and which, had it been known or submitted would have prompted the Minister to make a different assessment. The taxpayer must act diligently in communicating this fact to the Minister.

10. Lastly, according to section 1010.1 of the Act, the Minister, who acts by virtue **only** of the filing of a waiver referred to in this bulletin, cannot reassess a taxpayer more than six months after the latter has filed, in prescribed form, a notice of revocation of that waiver.