

Income Tax

LMR. 25-1/R1 The power to assess
Date of publication: September 30, 2008

Reference(s): *An Act respecting the Ministère du Revenu* (R.S.Q., c. M-31), ss. 25 and 25.1

This version of interpretation bulletin LMR. 25-1 supersedes the version of October 31, 1997. The bulletin was revised to take into account the amendment of sections referred to in the previous version. In addition, some changes in form were made to ensure technical accuracy.

APPLICATION OF THE ACT

1. Section 25 of the *Act respecting the Ministère du Revenu* (AMR) provides that the Minister may determine or redetermine the amount of the duties, interest and penalties owed by a person under a fiscal law as well as the amount of the refund to which a person is entitled under a fiscal law and send a notice of assessment to the person in this regard.
2. However, the second paragraph of section 25 of the AMR provides that no such assessment may be made more than four years after the later of the date on which the duties should have been paid and the date on which the return was filed. The second paragraph also provides that no such assessment may be made more than four years after the application for a refund was filed.
3. It should be noted that section 95 of the AMR provides that, with the necessary modifications, sections 1000 to 1079.16 of the *Taxation Act* (R.S.Q., c. I-3; hereinafter "TA") apply, inter alia, to assessments, payments and refunds in the matters contemplated by a fiscal law, subject to the AMR and the regulations.
4. For the purpose of determining the Minister's power to assess, section 25 of the AMR is applicable to all fiscal laws, other than the TA.
5. It is therefore important to keep in mind that, contrary to section 1010 of the TA, the second paragraph of section 25 of the AMR precludes the Minister from issuing a notice of assessment more than four years after the later of the date on which the duties should have been paid and the date on which the return was filed.
6. Paragraph *a* of section 25.1 of the AMR provides that the Minister may determine or redetermine the amount of the duties, refunds, interest and penalties and send a notice of assessment in this regard at any time, if the facts have been falsely represented through carelessness or voluntary

omission, if fraud has been committed in rendering an account, in filing a declaration, application for a refund or report or in supplying information under a fiscal law, or if no account has been rendered, no declaration, application for a refund or report filed or no information supplied under a fiscal law.

7. Finally, paragraph *b* of section 25.1 of the AMR provides that the Minister may determine or redetermine the amount of the duties, refunds, interest and penalties and send a notice of assessment in this regard at any time, if a waiver has been sent to the Minister on the prescribed form.