

Income Tax

LMR. 25.1-1 Notice of Waiver Referred to in Paragraph *b* of Section 25.1 of the Act
respecting the Ministère du Revenu

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

This bulletin presents the circumstances in which the Ministère will issue a notice of assessment after the expiry of the four-year time limit provided for in section 25 of the *Act respecting the Ministère du Revenu* (“AMR”) when a person sends the notice of waiver referred to in paragraph *b* of section 25.1 AMR.

1. Section 25 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 him in the four years after

(a) the later of the date on which the duties should have been paid, and the date on which the return was filed; or

(b) the date on which the application for a refund was filed.

2. When this time has expired, the Minister’s power to determine or redetermine the amount of the duties, refunds, interest and penalties is extinguished, except for the two cases specifically provided for in section 25.1 AMR, and the case of a correlative assessment issued under section 25.1.1 AMR.

3. The purpose of paragraph *b* of section 25.1 AMR is to **allow** the Minister to determine or redetermine the amount of the duties, refunds, interest and penalties after the expiry of the four-year period provided for in section 25 AMR where the concerned person assents thereto by means of a notice of waiver sent to the Minister.

4. In light of the foregoing, the purpose of that paragraph is not to oblige the Minister to act upon a notice of waiver. The power to carry out a determination after the time limit mentioned in section 25 AMR is granted by the legislator to the Minister, not to the person. Furthermore, the legislator took special care, when granting this power to the Minister, to attach an essential condition to it, i.e. to require of the Minister that he first obtain the person's assent in every case where he wishes to carry out a determination or redetermination after the expiry of the four-year time period, except, naturally, for persons referred to in paragraph *a* of section 25.1 AMR.

5. Thus, since exercise of the discretion provided for in paragraph *b* of section 25.1 AMR is a prerogative of the Minister, it is not the Minister's intention to systematically reassess every person who applies for a refund or reduction of his previously-assessed duties, interest or penalties.

6. In consideration of the foregoing, it is therefore up to the Minister, and not the person, 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 wishes to assess or reassess a person but cannot do so since the time allowed therefor has expired.

2° The Minister asks the person to send him a notice of waiver in prescribed form concerning the elements of an assessment he wishes to amend or, in the case of an original assessment, the elements he wishes to assess.

3° If the Minister obtains the waiver requested, he will then be allowed to assess or reassess the person.

7. In general, the Minister will only express his intention to assess or reassess a person in accordance with paragraph *b* of section 25.1 AMR if he **wishes** to regularize a situation he himself created. In this respect, the Minister does not consider that a situation is one he himself created if that situation results from the fact that in establishing an assessment, he reproduced an error contained in a statement, an application for refund or a report by a person.

The Minister will also express his intention to assess or reassess a person if it appears that without the assessment or reassessment, he would find himself in a legal impasse.

8. For example, the Minister will assess or reassess a person in accordance with paragraph *b* of section 25.1 AMR, in the following circumstances:

1° where, by reason of the time taken by the Minister to process a notice of objection served by a person, the time limit for assessing or reassessing has expired with respect to duties, refunds, interest or penalties other than those concerned by the objection and it is necessary to obtain a waiver from the person to regularize the situation contemplated in the objection;

2° where, by reason of a favourable decision of the Minister further to a notice of objection served by a person, or a final and conclusive decision of a tribunal in a person's favour, the Minister would amend another person's assessment on the grounds that the other person is part of the same assessed group as the first person, were it not for the expiry of the time granted to the Minister by the Act to reassess that other person;

3° where, by reason of the internal administrative time required to issue an assessment, or by reason of the Ministère's carelessness or inertia, the time granted to the Minister to issue an assessment has expired and, were it not for this situation, the Minister would issue a notice of assessment or would vary a previously issued assessment. For example, where a person claims the refund of duties assessed by the Minister **before** the expiry of the time provided

by the Act and the Ministère, by reason of carelessness or inertia, did not act upon this refund claim;

4° where the Minister would find himself in a legal impasse if he did not determine or redetermine the duties, refunds, interest and penalties after the expiry of the time limit provided for in the Act;

5° where, by reason of the exercise of a resolatory clause provided in a contract of sale, the Minister would assess or reassess a person 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 limit provided by the Act to do so, on the condition that the person act diligently in communicating this fact to the Minister;

6° more generally speaking, where a person 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 limit provided for in paragraph *b* of section 25.1 AMR and which, had it been known or submitted, would have prompted the Minister to establish a different assessment. The person must act diligently in communicating this fact to the Minister.

9. Lastly, under section 25.3 AMR, the Minister who acts by virtue **only** of the filing of a waiver referred to in this bulletin, cannot reassess a person more than six months after the latter has filed, in prescribed form, a notice of revocation of that waiver.