

Income Tax

LMR. 38-1/R1 *Application of section 38 of the Act respecting the Ministère du Revenu in the case of certain audits and inspections*

Date of publication: **September 29, 2006**

Reference(s): *An Act respecting the Ministère du Revenu (R.S.Q., c. M-31), ss. 1.0.1, 34.1, 34.2, 37.7, 38, 39, 39.2, 43, 61 and 61.2*

This version of bulletin LMR. 38-1 supersedes the version of January 31, 2005.

The bulletin was revised primarily to take into account the introduction, as a result of the coming into force of chapter 2 of the statutes of 2003, of section 39.2 of the Act respecting the Ministère du Revenu, under which the Ministère may apply to a judge for an order to remedy a person's failure to provide access, assistance, information, documents or things that the person was required to provide under, in particular, section 38 of the Act.

In addition, some changes in respect of style and conformity were made to ensure technical accuracy.

Section 38 of the *Act respecting the Ministère du Revenu* (AMR) provides for the general powers of audit of the Minister. This bulletin explains the application of the AMR in cases where it is necessary to obtain a copy of electronic registers.

THE ACT

1. Under section 38 of the AMR, a person authorized by the Minister (referred to as “auditor” for the purposes of this bulletin) may audit or examine supporting documents and registers, and any other document or thing which may relate to the information that is or should be contained in the registers or supporting documents, to the prohibition set out in section 34.2 of the AMR or to the amount of any duty that should be paid, deducted, withheld or collected under a fiscal law. An auditor may also copy, print out or photograph such a document or thing. Usually, the Ministère obtains the required information and documents by means of a simple verbal or written request. If such a request is unsuccessful, the Ministère may make a formal demand, as provided under section 39 of the AMR. For further information concerning this measure, see the current version of bulletin LMR. 39-1.

2. For the purposes of the fiscal laws, section 1.0.1. of the AMR defines “register” and “supporting document” as follows:

“register” includes any document, whatever the medium used, that is used to collate information in particular for accounting, financial, fiscal or legal purposes and includes the term “record” whenever that term is used in a fiscal law or in the regulations made under such a law to designate a register;

“supporting document” includes any document, whatever the medium used, or any other thing supporting information that is or should be contained in a register.

For further information on this subject, see the current version of bulletin LMR. 34-1.

3. According to section 37.7 of the AMR, “document” means any document, whatever the medium used, including any computer program, and the equipment carrying the document, in particular any electronic component, such as software or a hard disk.

4. Section 38 of the AMR also provides that the owner or manager of the property or business and any other person present on the premises may be obliged to give the auditor reasonable assistance in the audit or examination and, for that purpose, the owner or manager may be obliged to accompany the auditor on the premises. A subcontractor that keeps an owner’s registers is also required to give the Ministère reasonable assistance in retrieving files.

APPLICATION OF THE ACT

5. The audit or examination provided for in section 38 of the AMR includes the audit of electronic registers. At the auditor’s request, the owner of the business (or any person designated by the owner) must make the business’s electronic files available to the auditor for any audit period. The auditor may then copy such files. Furthermore, the auditor may ask a person to provide access to the registers in the same form as that in which they are kept. The person who keeps the electronic registers cannot refuse access to the electronic files on the grounds that a paper copy of the accounting data has already been provided.

6. The following four registers are generally requested as part of an audit:

- the general ledger;
- the accounts payable journal and ledgers;
- sales journal and ledgers; and
- the payroll journal and ledgers.

The appendix to this bulletin specifies the information that the Ministère expects to find in these documents. However, other information not listed in the appendix but considered relevant by the auditor may be requested.

7. In performing an audit, the auditor may determine the terms under which electronic registers must be submitted. These terms are determined on the basis of the following criteria:

- (a) the files of the registers must contain all the information required for the audit;
- (b) the data format must be compatible with data query software commonly found on the market;
- (c) the files must be accessible to the auditor, that is, presented in readable format.

8. The auditor is generally able to process files that are in ASCII text, EBCDIC, dBase, MS Access or Excel format. Text files should preferably be submitted as a data base file, that is, a file consisting exclusively of lines (records) and columns (fields). The files must be divided by fiscal year. They should preferably be submitted to the auditor on CD-ROMs, DVDs, 3480 or 3490 cartridges, Jaz cartridges, Zip disks or nine-track tapes.

9. Since a hard disk or any other backup medium is considered a document for the purposes of the AMR, the auditor may browse it to find data relevant to the audit. The auditor may also copy the data contained on the hard disk, provided the data are relevant to the audit. If the auditor sees fit, the index on the hard disk may be consulted or copied onto a medium (such as a diskette, CD-ROM or DVD) for consultation, and further information relevant to the audit may subsequently be requested.

10. Audit tools, such as a laptop, a computer program or software, may be used by the auditor, in particular to locate, process, capture or retrieve information relevant to the audit or examination.

11. Section 34.1 of the AMR provides that, where a register or supporting documents are kept by means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling or processing the data in whatever manner, no function of any computer program or electronic component that is or may be installed in the electronic device or computer system to modify, correct, delete, cancel or otherwise alter data without preserving the original data and its subsequent modifications, corrections, deletions, cancellations or alterations may be used. The use of a zipper, for example, is prohibited.

12. To ensure that a person fulfils the obligations provided for in section 34.1 of the AMR, the auditor may examine the software used by the person. To that end, the auditor may access the person's accounting system, in particular by means of software, a terminal or any other peripheral equipment considered necessary by the auditor. This will enable the auditor to verify the integrity of the data submitted.

ORDER

13. Under section 39.2 of the AMR, where a person fails to provide access, assistance, information, documents or things to an auditor as required under section 38 of the AMR, the Minister may apply to a judge of the Court of Québec for an order requiring the person to provide such access, assistance, information, documents or things to the Minister.

14. At least five days before the application for an order is heard, the person must receive notice thereof. The judge who hears the application may make such order as he or she deems proper in order to remedy the failure.

15. Under section 61.2 of the AMR, a person who contravenes such a court order is guilty of an offence and is liable to a fine of not less than \$800 and not more than \$10,000 or, notwithstanding article 231 of the *Code of Penal Procedure* (R.S.Q., c. C-25.1), to both the fine and imprisonment for a term not exceeding six months.

OFFENCE AND PENALTY

16. Section 43 of the AMR prohibits any person from hindering or attempting to hinder in any way an auditor in the performance of his or her duties, such as by refusing to provide the auditor with access to accounting system files. Under section 61 of the AMR, every person who fails to comply with section 43 of the AMR is guilty of an offence and is liable to a fine of up to \$10,000 or to both the fine and a term of imprisonment not exceeding six months.

APPENDIX

Information which the Ministère expects to find in the files of the registers, but which may vary from industry to industry

1. General ledger files

- The number for each entry
- The entry date
- The accounting period in which the entry was made (where applicable)
- The general ledger account number
- A description of the general ledger account
- The code for the source of the entry
- The reference (to a record or document)
- A brief description of the transaction (where applicable)
- The amount

2. Accounts payable journal files

- The number for each entry
- The code for the supplier or for the person to whom payment was made
- The name of the supplier or of the person to whom payment was made
- The supplier's address and postal code
- The invoice number or payment reference
- The invoice date
- The journal entry date
- The invoice payment date
- A brief description of the transaction
- A breakdown of the transaction by general ledger number, including

- the general ledger account number
- a description of the general ledger account
- the amount

3. Sales journal files

Sales files must be broken down by invoice or by product.

- The invoice number
- The invoice date
- The contact information for the customer
- The product or service code
- A description of the product or service
- The tax status of the product or service
- The unit price of the product or service
- The quantity sold
- The total amount before taxes
- The goods and services tax (GST) or harmonized sales tax (HST) collected
- The Québec sales tax (QST) collected
- Any other applicable tax or duty
- The customer's address and postal code
- The delivery address, including the postal code

4. Payroll journal files

- The employee's social insurance number
- The employee number
- The employee's first and last names

- The employee's address
- The address of the workplace
- The hiring date
- The date of termination of employment
- The pay period start-date
- The pay period end-date
- The payday date
- The hourly rate
- The number of hours worked during the pay period
- The amount of any taxable benefits paid for the pay period
- The amount of any bonuses paid for the pay period
- The amount of gross salary or wages paid for the pay period
- The cumulative amount of gross salaries or wages paid
- A description of (or the code for) the taxable benefits