

Consumer Taxes

LAF. 36-1/R1 Extension of Time Limits
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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), sections 36, 36.0.1 and 36.1
 Taxation Act (CQLR, c. I-3), section 1029.6.0.1.2

THIS BULLETIN, WHICH WAS PUBLISHED ON DECEMBER 29, 2011, IS REPUBLISHED HERE TO CORRECT AN ERROR IN POINT 8.

This version of interpretation bulletin LAF. 36-1 (previously LMR. 36-1) supersedes the version of March 31, 2004. The bulletin was revised to take into account, further to the coming into force of chapter 6 of the statutes of 2011, the insertion in the Tax Administration Act of section 36.0.1, which restricts the extension of time limits for refundable tax credits for businesses. As a rule, this restriction applies to applications to extend a time limit that are filed after March 23, 2006.

This bulletin applies to all taxpayers and mandataries who, for the purposes of income tax, consumption taxes or source deductions, are required under a fiscal law to file a return or report, or to provide information to the Minister of Revenue (hereinafter the “Minister”).

This bulletin discusses the context surrounding, and Revenu Québec’s policy with respect to, the exercise of the Minister’s discretionary power to extend a time limit set under a fiscal law for filing a return or report or for providing information.

APPLICATION OF THE ACT

Principle

1. Under section 36 of the *Tax Administration Act* (TAA), the Minister has the discretionary power to extend a time limit set under a fiscal law for filing a return or report or for providing information.

Scientific research and experimental development expenditures

2. Section 36 of the TAA does not apply in respect of the time limit for filing a prescribed form containing prescribed information provided for in sections 230.0.0.4.1 and 1029.8.0.0.1 of the *Taxation Act* (TA), in accordance with the first paragraph of section 36.0.1 of the TAA. Therefore, where a taxpayer fails to report, within 12 months following the taxpayer’s filing-due date, scientific

research and experimental development expenditures incurred in a taxation year, that taxpayer loses entitlement to a deduction or tax credit for those expenditures.

Refundable tax credits for businesses

3. The first paragraph of section 1029.8.0.0.1 of the TA provides that a taxpayer may be deemed to have paid an amount to the Minister on account of the taxpayer's tax payable for a particular taxation year under any of Divisions II to II.6.15 of Chapter III.1 of Title III of Book IX of Part I of the TA, only if the taxpayer files with the Minister the prescribed form containing the prescribed information and, where applicable, a copy of each agreement, qualification certificate, advance ruling, certificate, rate schedule, receipt or report the taxpayer is required to file in accordance with that division on or before the day that is 12 months after the taxpayer's filing-due date for the particular year.

4. Therefore, where a taxpayer fails to claim, within the 12-month time limit, a refundable tax credit under any of Divisions II to II.6.15 of Chapter III.1 of Title III of Book IX of Part 1 of the TA in respect of expenditures that are incurred in a taxation year and that give entitlement to such a credit, that taxpayer loses entitlement to the tax credit in respect of those expenditures, except in those cases described in points 5 and 7 of this bulletin.

Automatic extension of the time limit

5. Under the second paragraph of section 1029.6.0.1.2 of the TA, the 12-month time limit provided for under the first paragraph of that section is automatically extended where the delay in filing a qualification certificate, certificate or advance ruling is due to the fact that the taxpayer received the document from the Minister or body responsible for issuing the document (hereinafter the "responsible Minister or body") after the fifteenth day preceding the expiry of the 12-month time limit and the application for the document concerned was filed with this responsible Minister or body before the expiry of the ninth month following the filing-due date for the taxpayer's income tax return. In such a case, the time limit is extended by operation of law and the taxpayer does not have to file an application to have the time limit extended, in accordance with this bulletin.

6. For example, consider the case of a corporation that, during its fiscal period ending on December 31, 20X1, incurred expenditures giving entitlement to a refundable tax credit for which the corporation must obtain a qualification certificate from a responsible body. The filing-due date for the corporation's income tax return is June 30, 20X2, in accordance with section 1 of the TA, and the corporation must claim the refundable tax credit by June 30, 20X3 (12 months after the filing-due date). If the corporation files an application for the qualification certificate with the responsible body on March 15, 20X3, and this body issues the qualification certificate on July 4, 20X3, the corporation may claim the tax credit from Revenu Québec, even though the 12-month limit had expired on June 30, 20X3. In this example, the 12-month time limit is extended by operation of law since the following conditions have been met:

- a) the corporation received its qualification certificate on July 4, 20X3, that is, after June 15, 20X3 (i.e., after the fifteenth day preceding the expiry of the 12-month time limit);

- b) the application for the qualification certificate was filed with the responsible body on March 15, 20X3, that is, before April 1, 20X3 (i.e., before the expiry of the ninth month following the corporation's filing-due date for the 20X1 taxation year).

Discretionary extension of the time limit

7. Under the second paragraph of section 36.0.1 of the TAA, the Minister has the discretionary power to extend the time limit provided for under the first paragraph of section 1029.6.0.1.2 of the TA where the delay in filing a qualification certificate, certificate or another similar document is due to the fact that the taxpayer received the document from the responsible Minister or body after the fifteenth day preceding the expiry of the 12-month time limit, and the application for the document concerned was filed with this responsible Minister or body after the expiry of the ninth month following the filing-due date for the taxpayer's income tax return but before the expiry of the twelfth month following the filing-due date. In such a case, the taxpayer must file an application to have the time limit extended, which will be processed in accordance with the policy set out herein.

8. For example, consider the case of a corporation that, during its fiscal period ending on December 31, 20X1, incurred expenditures giving entitlement to a refundable tax credit for which the corporation must obtain a qualification certificate from a responsible body. The filing-due date for the corporation's income tax return is June 30, 20X2, in accordance with section 1 of the TA, and the corporation must claim the refundable tax credit by June 30, 20X3 (12 months after the filing-due date). If the corporation files an application for the qualification certificate with the responsible body on April 15, 20X3, and this body issues the qualification certificate on July 4, 20X3, the corporation must, before it can claim a tax credit, file an application with Revenu Québec to have the time limit extended. Such an application can be filed in respect of the 9-month time limit that expired on March 31, 20X3, in accordance with the second paragraph of section 36.0.1 of the TAA, since the following conditions have been met:

- a) the corporation received its qualification certificate on July 4, 20X3, that is, after June 15, 20X3 (i.e., after the fifteenth day preceding the expiry of the 12-month time limit);
- b) the application for the qualification certificate was filed with the responsible body on April 15, 20X3, that is, after March 31, 20X3, but before July 1, 20X3 (i.e., after the expiry of the ninth month following the corporation's filing-due date for the 20X1 taxation year but after the expiry of the twelfth month following this filing-due date).

9. Points 5 and 7 of this bulletin apply to a taxation year for which the time limit for filing a qualification certificate, advance ruling or certificate with the Minister, in accordance with Divisions II to II.6.15 of Chapter III.1 of Title III of Book IX of Part 1 of the TA, expires after June 30, 2006.

Waiving of the filing of a prescribed form

10. Under the first paragraph of section 36.1 of the TAA, the Minister may waive the filing of a prescribed form, prescribed information, supporting document or any other document the filing of which would otherwise be required.

11. However, under the third paragraph of that section, the Minister may not waive the filing of a prescribed form, prescribed information or a document referred to in the first paragraph of section 230.0.0.4.1 or 1029.6.0.1.2 of the TA or in section 1029.8.0.0.1 of the TA that is filed with the Minister after the expiry of the time limit provided for in any of those provisions to the extent that the time limit has not been extended in accordance with the second paragraph of section 1029.6.0.1.2 of the TA (automatic extension of the time limit) or the second paragraph of section 36.0.1 of the TAA (discretionary extension of the time limit). This rule means the Minister cannot waive, for example, the filing of a form required in order to claim a tax credit, where the form was filed after the expiry of the time limit and where the Minister does not have the power to extend the time limit set under the TA for filing the form.

APPLICATION OF DISCRETIONARY POWER

12. The policy of the Minister with regard to the exercise of discretionary power under section 36 of the TAA is essentially the same as that described in the current version of bulletin LMR. 94.1-1.

13. The discretionary power of the Minister to extend a time limit is exercised only in **exceptional circumstances**.

14. The Minister may act upon an application to have a time limit extended only if he or she obtains, where applicable, satisfactory evidence of the situation described by the taxpayer or mandatary.

15. The information and examples given in this bulletin are not exhaustive and must not be interpreted as restricting the discretionary power of the Minister.

16. The Minister's decision to extend a time limit may be made as a matter of equity, in particular where a situation prevents the taxpayer or mandatary from complying with a fiscal obligation to provide information or to file a return, report or prescribed form on time. Such situations are described in points 17 to 20 below.

Exceptional circumstances not attributable to the taxpayer or mandatary

17. The Minister considers that an extension of a time limit may be justified where one of the following situations prevents the taxpayer or mandatary from complying with a fiscal obligation on time or in an adequate manner and, as a consequence of this, interest or penalties are applied or could be applied, or (for example) refundable tax credits are not granted:

- a) exceptional situations beyond the control of the taxpayer or mandatary, such as
 - a natural disaster, a flood or a fire;
 - a serious illness or accident, or a death in the immediate family;
 - a disruption of postal service;
- b) actions attributable to Revenu Québec, such as
 - an error in the documents or information (written or verbal) provided by Revenu Québec;

— an undue processing delay.

Factors to be considered

18. Each case must be examined in light of the particular facts, taking into account the credibility or good faith that may be ascribed to the justifications given by the taxpayer or mandatory.

19. In evaluating the circumstances that might justify the extension of a time limit, the Minister may consider whether

- a) the taxpayer or mandatory has met all fiscal obligations in the past;
- b) the taxpayer or mandatory knowingly allowed the lateness to exist that resulted in interest charges or penalties, or in a refundable tax credit not being granted;
- c) the taxpayer or mandatory made all reasonable efforts to comply with the law and was not negligent or careless in managing affairs; and
- d) the taxpayer or mandatory acted with due diligence to remedy any lateness or omission.

20. In assessing the good faith of a taxpayer or mandatory, none of these elements alone can be considered determinant. All of them must be taken into account.

Application to the Minister

21. A taxpayer or mandatory who wishes the Minister to extend a time limit must make an application to that effect. This application must indicate the taxpayer's or mandatory's name, address and (as applicable) social insurance number, registration number, business number or identification and file numbers, along with the periods or taxation years concerned, the reasons for the application, and the pertinent documentation.

Review

22. As in the case of decisions made under section 94.1 of the TAA, a review mechanism exists with respect to decisions made under section 36 of the TAA. Consequently, a taxpayer or mandatory who believes that a decision made under section 36 of the TAA is unjust or ill-founded may apply to have the decision reviewed. To do so, the taxpayer or mandatory must make an application to that effect in writing, indicating the reasons for believing the decision to be unjust or ill-founded.