

Consumer Taxes

LAF. 59.2-1/R4 Penalties for Failure to Deduct, Withhold, Collect, Pay or Remit an Amount
under a Fiscal Law

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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), sections 27.1, 27.1.1 and 59.2

*This version of interpretation bulletin LAF. 59.2-1 (formerly LMR. 59.2-1) supersedes the version of October 31, 1997. The bulletin was revised to take into account legislative amendments, such as the amendment made to section 458.0.4 of the **Act respecting the Québec sales tax**, which no longer provides for a specific penalty, and the repeal of section 226 of the **Act respecting municipal taxation**, and to explain certain technical aspects of the amendments. In addition, some changes in respect of style and conformity were made to ensure technical accuracy.*

This bulletin sets out Revenu Québec's policy concerning the application of penalties for late payment of source deductions and employer contributions, and any other amount that a person is required to deduct, withhold, collect, pay or remit to the Minister of Revenue under a fiscal law.

APPLICATION OF THE ACT

1. According to the first paragraph of section 59.2 of the *Tax Administration Act*¹ (hereinafter the "TAA"), every person who fails to deduct, withhold or collect an amount the person is required to deduct, withhold or collect under a fiscal law incurs a penalty of 15% of that amount.
2. According to the second paragraph of section 59.2 of the TAA, every person who fails, within the time prescribed by law or by an order of the Minister, to pay or remit an amount the person is required to pay or remit under a fiscal law incurs a penalty equal to
 - (a) 7% of that amount, where the delay does not exceed seven days;
 - (b) 11% of that amount, where the delay does not exceed 14 days; or
 - (c) 15% of that amount, in other cases.

¹ This Act was formerly entitled *An Act respecting the Ministère du Revenu*. The title was changed by section 91 of chapter 31 of the Statutes of Québec 2010.

This penalty and the penalty provided for in the first paragraph of section 59.2 of the TAA cannot be combined.

3. Currently, the penalties provided for in the first and second paragraphs of section 59.2 of the TAA apply, as the case may be, in respect of the amounts a person is required to deduct, withhold, collect, pay or remit under section 1015 of the *Taxation Act* (CQLR, chapter I-3), section 34 of the *Act respecting the Régie de l'assurance maladie du Québec* (CQLR, chapter R-5), section 63 of the *Act respecting the Québec Pension Plan* (CQLR, chapter R-9), section 15 of the *Act to promote workforce skills development and recognition* (CQLR, chapter D-8.3), section 39.0.3 of the *Act respecting labour standards* (CQLR, chapter N-1.1) and sections 422, 437, 458.0.1 and 528 of the *Act respecting the Québec sales tax* (CQLR, chapter T-0.1; hereinafter the "AQST").

4. Under section 27.1 of the TAA, every amount or negotiable instrument remitted to the Minister as payment under a fiscal law or a regulation under a fiscal law is presumed to have been received by the Minister on the date stamped by an employee of Revenu Québec on the form relating to the payment.

Similarly, every amount or negotiable instrument remitted to a financial institution as payment under a fiscal law or a regulation under a fiscal law is presumed to have been received by the Minister on the date it was so remitted.

5. Under section 27.1.1 of the TAA, every remittance made by means of a credit card as payment under a fiscal law or a regulation under a fiscal law is presumed to have been received by the Minister on the date stamped by an employee of Revenu Québec on the form relating to the payment, provided the credit card is honoured by the Minister.

DATE OF PAYMENT

6. Where a person acting in the person's capacity as an employer or as a mandatary of the Minister makes a payment under a fiscal law or a regulation under a fiscal law, the relevant date for purposes of imposing the penalty provided for in the second paragraph of section 59.2 of the TAA is the date the payment is received by the Minister, not the date the payment is sent by mail or otherwise.

7. Where a person acting in the person's capacity as an employer or as a mandatary of the Minister directly remits or mails an amount or a negotiable instrument to the Minister as payment under a fiscal law or a regulation under a fiscal law, no penalty is to be imposed under the second paragraph of section 59.2 of the TAA where the amount or negotiable instrument, as the case may be, is received by the Minister on or before the date payment must be made under that law or regulation and, in the case of a negotiable instrument, where it falls due within that time period and is paid by the financial institution on which it is drawn.

8. Where a person acting in the person's capacity as an employer or as a mandatary of the Minister remits an amount or a negotiable instrument to a financial institution as payment under a fiscal law or a regulation under a fiscal law, no penalty is to be imposed under the second paragraph of section 59.2 of the TAA where the amount or negotiable instrument, as the case may be, is remitted to the financial institution on or before the date payment must be made under that law or

regulation and, in the case of a negotiable instrument, where it is paid by the financial institution on which it is drawn.

9. A remittance made to a financial institution using an automatic teller machine (ATM) is considered the same as a remittance made at the counter of a financial institution.

AMOUNT ON WHICH THE CALCULATION OF A PENALTY IS BASED

10. With regard to Québec sales tax, any penalty under section 59.2 of the TAA must be calculated on a positive amount of net tax. Thus, a penalty provided for in that section cannot be imposed on an excess refund claimed, since a negative amount of net tax does not constitute an amount that a mandatary is required to deduct, withhold, collect, pay or remit under the AQST.

11. A penalty provided for in section 59.2 of the TAA, calculated in respect of the instalments a registrant is required to pay under section 458.0.1 of the AQST, is assessed when the Minister, in accordance with section 25 of the TAA, determines the amount of duties, interest and penalties relating to the registrant's reporting period.

12. The second paragraph of section 59.2 of the French version of the TAA uses the terms *payer* (to pay) and *remettre* (to remit) whereas both the second paragraph of section 437 and section 528 of the French version of the AQST use the term *verser*. The French version of this bulletin specifies that because *verser* is synonymous with *payer* and *remettre*, the penalty provided for in the second paragraph of section 59.2 of the TAA may be assessed in respect of the amount to be remitted pursuant to either the second paragraph of section 437 or section 528 of the AQST. No clarification is required with respect to the English version of the AQST, since both the second paragraph of section 437 and section 538 of the AQST use the word "remit," as does the second paragraph of section 59.2 of the TAA.

APPLICATION

13. This bulletin takes into account the repeal of section 226 of the *Act respecting municipal taxation* (CQLR, chapter F-2.1) by Bill 100 assented to on June 17, 2005 (S.Q. 2005, c. 23). The repeal of that section applies to the calendar year 2005 and subsequent calendar years. The bulletin also takes into account the legislative amendment made to section 458.0.4 of the AQST by Bill 2 assented to on May 15, 2009 (S.Q. 2009, c. 5). That amendment took effect on April 1, 2007.