

Consumer Taxes

LAF. 93.1.3-1/R1 Extension of the Deadline for Filing an Objection

Date of publication: June 28, 2013

Reference(s): Tax Administration Act (CQLR, c. A-6.002), sections 93.1.3 and 93.1.4

This version of interpretation bulletin LAF. 93.1.3-1 (formerly LMR. 93.1.3-1) supersedes the version of March 31, 1999. The bulletin was revised to take into account the legislative amendments made since that date. It applies to applications for an extension of the deadline for filing an objection, where such applications are filed on or after January 1, 1998.

This bulletin sets forth Revenu Québec's position on applications for an extension of the deadline for filing an objection.

APPLICATION OF THE ACT

1. Pursuant to section 93.1.1 of the *Tax Administration Act*¹ (TAA), a person may object to an assessment under a fiscal law by notifying to the Minister of Revenue a notice of objection setting out the reasons for the objection and all relevant facts.

2. The notice of objection must generally be notified in writing on or before the day that is 90 days after the date the disputed notice of assessment was sent. However, in the case of an individual or a testamentary trust, the notice of objection may be filed within one year after the deadline for filing the fiscal return for the taxation year at issue, where the disputed assessment

- (a) concerns the eligible wages of a person to whom section 51 of the *Act respecting parental insurance* (CQLR, chapter A-29.011) applies;
- (b) concerns the business income of a self-employed worker or the eligible remuneration of a family-type resource or intermediate resource and is issued under Chapter IV of the *Act respecting parental insurance*;
- (c) is issued under sections 220.2 to 220.13 of the *Act respecting municipal taxation* (CQLR, chapter F-2.1);

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.

- (d) is issued under the *Taxation Act* (CQLR, chapter I-3);
- (e) is issued pursuant to section 83 of the *Act respecting the legal publicity of enterprises* (CQLR, chapter P-44.1);
- (f) concerns an amount payable under section 34.1.1, 37.6 or 37.17 of the *Act respecting the Régie de l'assurance maladie du Québec* (CQLR, chapter R-5);
- (g) concerns self-employed earnings or earnings as a family-type resource or an intermediate resource and is issued under the *Act respecting the Québec Pension Plan* (CQLR, chapter R-9); or
- (h) is issued under sections 358 to 360 of the *Act respecting the Québec sales tax* (CQLR, chapter T-0.1).

3. Pursuant to the first paragraph of section 87 of the TAA, the date of sending of any notice of assessment is presumed to be the date of that notice.

4. Pursuant to section 93.1.3 of the TAA, where a person has not objected to an assessment within the time specified in point 2 of this bulletin and not more than one year has elapsed after the expiry of that time, the person may apply to the Minister for an extension by sending a written application to the directorate concerned at Revenu Québec (see point 32 of this bulletin).

GENERAL CONDITIONS FOR GRANTING AN APPLICATION FOR AN EXTENSION OF THE DEADLINE FOR FILING AN OBJECTION

5. In accordance with the provisions of sections 93.1.3 and 93.1.4 of the TAA, a person's application for an extension of the deadline will be granted if the person proves to the Minister that

- (a) it was impossible in fact for the person to act within the time specified for filing an objection (see points 6 through 28 of this bulletin); and
- (b) the person filed the application as soon as circumstances allowed and no later than one year after the expiration of the deadline for filing an objection provided for under section 93.1.1 of the TAA (see points 29 and 30 of this bulletin).

Impossibility in fact to act

6. Impossibility in fact to act refers to any circumstance that can justify a reasonably well-informed person not having notified a notice of objection within the time specified by the TAA. It also refers to any instance in which a mandate was validly entrusted by a person to a professional (accountant, lawyer, etc.) or to any other person within the specified time for filing an objection and the failure to meet the deadline results from the actions of that mandatary.

7. Revenu Québec considers that such circumstances must, however, be the result of events that are beyond the person's control, and not the result of the person's failure to appropriately manage the person's affairs.

8. The examples below illustrate Revenu Québec's position on some of the most commonly encountered situations. They are not binding on the Minister, nor do they constitute an exhaustive list of all possible situations.

Circumstances related or attributable to the person

9. Revenu Québec generally will not grant an extension of the deadline for filing an objection if the failure to meet the deadline is the result of the person's inaction, error or negligence. That said, an application may be granted if the person proves that the failure to meet the deadline for filing an objection is the result of constraints that personally affected the person and over which the person had no control during the time specified by the TAA for filing an objection.

Illness

10. The physical or mental illness of a person or a person's relative may be considered to have made it impossible in fact for the person to act, provided the illness was serious enough and of sufficient duration to prevent the person from seeing to his or her affairs or from designating someone to act on his or her behalf during the time specified for filing an objection.

Absence

11. It is possible for a person to have been absent from his or her domicile when the notice of assessment at issue was received. It is also possible for the person to have had to absent himself or herself before the deadline for filing an objection.

12. In principle, Revenu Québec does not consider that absence from one's domicile or place of residence is sufficient cause to extend the deadline for filing an objection, regardless of how long the person was absent.

13. However, an extension of the deadline for filing an objection may be granted if the person shows that the necessary measures were taken before the person's absence to ensure that the person's affairs were given the proper follow-up and that the failure to notify a notice of objection within the time specified results from circumstances beyond the person's control.

14. That said, even if the necessary measures were not taken, Revenu Québec may still grant an extension of the deadline for filing an objection if the person proves that the departure was urgent, unforeseen and necessary, and that it was impossible for the person to undertake the necessary measures by the deadline.

Error in determining the deadline

15. An error in determining the deadline for filing an objection is not, in and of itself, cause to extend the deadline.

Evidence obtained after the deadline for filing an objection

16. Obtaining, after the deadline for filing an objection, knowledge of evidence that could lead to the disputed assessment being varied may be considered cause to extend the deadline, provided the person can, in good faith, prove either that it would have been impossible for the person to have had knowledge of the evidence before the deadline expired, or that the person had every

reason to believe, during the time specified for filing an objection, that obtaining the required evidence would have been impossible.

17. The fact that a person obtains a professional opinion or judgment favourable to the person's case after expiry of the time specified for filing an objection is not, for Revenu Québec, cause to grant an extension.

Circumstances related to actions by a third party

18. Revenu Québec may grant an extension of the deadline for filing an objection if the person proves that the failure to meet the deadline for filing an objection results from the actions of a third party over whom the person had no control.

Notice not received

19. Revenu Québec may grant an extension of the deadline for filing an objection where the recipient of a notice of assessment did not receive said notice, provided the recipient proves conclusively that the notice was not received.

Postal strike

20. A postal strike that prevented a notice of objection from being filed by the deadline may constitute an impossibility in fact to act and, as such, may make it possible for an extension to be granted. The same is true if a postal strike resulted in the disputed notice of assessment being received after the deadline for filing an objection.

Failure to comply with the deadline that is attributable to a mandatary of the person

21. Where a mandate was validly entrusted by a person to a professional (accountant, lawyer, etc.) or to any other person within the time specified for filing an objection and the failure to comply with the deadline occurs because of the mandatary, Revenu Québec may grant an extension of the deadline for filing an objection, provided the failure to meet the deadline is not the result of the mandatary's negligence or inexcusable error.

Failure to comply with the deadline that is attributable to an employee of the person

22. Inaction, error or negligence on the part of an employee of the person will not be considered impossibility in fact to act.

23. Revenu Québec may, however, grant an extension of the deadline for filing an objection if the person proves that

(a) the employee normally responsible for filing the objection with Revenu Québec was unexpectedly absent (for example, because of illness); and

(b) it was impossible for the person to take the necessary measures to have the objection filed within the time specified.

Superior force

24. An event (such as a fire, an attack, a flood or a storm) that results in one's books and records being destroyed or made unavailable can constitute an impossibility in fact to act. The person must

show how the event made it impossible to file a notice of objection within the time specified in the TAA.

Circumstances attributable to Revenu Québec

25. Revenu Québec will grant an extension of the deadline for filing an objection in any case where it is shown that the objection could not have been filed within the time specified in the TAA because of circumstances attributable to Revenu Québec, the nature of which prevented the person from notifying a notice of objection, or could have led a reasonably well-informed person to believe that he or she did not have to file an objection.

Notice of assessment sent to the wrong address

26. It may be impossible in fact for a person to act if the notice of assessment at issue was originally sent to an address other than the address the person gave Revenu Québec and, as a result, was received at the correct address after the deadline for filing an objection.

27. A corporation may ask Revenu Québec to send correspondence to an address other than that of its head office. For the purposes of point 26 of this bulletin, Revenu Québec does not consider a notice of assessment sent to a corporation's head office rather than to another address provided by the corporation to have been sent to the wrong address.

Errors on the notice of assessment

28. Errors made by Revenu Québec in transcribing information on a notice of assessment can, under certain circumstances, be considered to have made it impossible in fact for a person to act. In such a case, however, the person being assessed must show that he or she took the necessary steps to have Revenu Québec explain the assessment during the time allowed for filing an objection and was unable to receive the necessary information before the deadline for filing an objection.

Initial contact with the issuer of the notice of assessment

29. Before filing an objection, a person who disagrees with a notice of assessment is encouraged to contact the directorate of Revenu Québec that issued the assessment in order to request that the assessment be reviewed. That said, the directorate may issue an unfavourable reply after the deadline for filing an objection. In such a case, it will have been impossible in fact for the person to act during the time specified.

Obligation of diligence

30. While an error on the part of a person's mandatary may be considered to have made it impossible in fact for the person to act, such an error does not exempt the person from the obligation of diligence provided for by the second paragraph of section 93.1.4 of the TAA.

31. A person has the obligation of following up on his or her file with the mandatary to ensure that any notices of objection and applications for an extension are filed as soon as possible.

FILING THE APPLICATION

32. The application for an extension of the deadline for filing an objection must be sent to the following address:

Directeur des oppositions – Québec
Direction générale de la législation et du registraire des entreprises
Revenu Québec
3800, rue de Marly, secteur 5-1-8
Québec (Québec) G1X 4A5

CONTENT OF THE APPLICATION

33. The application for an extension of the deadline for filing an objection must be accompanied by the notice of objection that was not notified to the Minister by the deadline.

34. The application must set out the person's reasons and all relevant facts so that Revenu Québec can determine whether or not an extension can be granted. It is important to list the facts in chronological order and to enclose any document that may constitute proof of the circumstances being invoked. If the file is incomplete, the application may be rejected.

APPEAL FROM THE MINISTER'S DECISION

35. An appeal from the Minister's refusal to grant an extension of the deadline for filing an objection can be filed with the Court of Québec within 90 days of the mailing date of the decision.