

Consumer Taxes

LAF. 94.1-1/R8

Waiver or Cancellation of Interest, Penalties or Charges

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Reference(s):

Tax Administration Act (CQLR, c. A-6.002), section 94.1

This version of interpretation bulletin LAF. 94.1-1 supersedes the version of July 23, 2013. The bulletin was revised primarily to take into account the decision rendered by the Superior Court on November 22, 2017, in 1092072 Ontario inc. c. Agence du revenu du Québec (2017 QCCS 5369), regarding the exercise of discretion in cases of wash transactions.

This bulletin applies to the interest and penalties provided for by a fiscal law in respect of income tax, consumer taxes, source deductions and employer contributions. It also applies to the charges (including fees) provided for in sections 12.0.3.1, 12.1 and 12.2 of the *Tax Administration Act* (TAA).

APPLICATION OF THE ACT

PRINCIPLE

1. Pursuant to section 94.1 of the TAA, the Minister of Revenue may waive or cancel, in whole or in part, any interest, penalties or charges payable by a person further to the application of a fiscal law.
2. The waiver of interest, penalties or charges differs from the cancellation of such amounts. Waiver occurs where the Minister intervenes before any interest or penalty is assessed. It also occurs where the Minister waives interest or charges that accrue after a notice of assessment has been issued. Where waiver occurs, the Minister elects not to impose the interest, penalties or charges, so that those amounts never appear on a notice of assessment or a statement of account.
3. The cancellation of interest, penalties or charges occurs where the Minister intervenes after such amounts are assessed or required to be paid. Any refund that results from such a cancellation bears interest in accordance with section 30 of the TAA or section 1052 of the *Taxation Act* (CQLR, c. I-3) (TA), as applicable.

EXERCISE OF DISCRETION

4. At the Minister's discretion, interest, penalties or charges may be waived or cancelled.

Time limit

5. The Minister's discretion to waive or cancel interest, penalties or charges cannot be exercised, in respect of a taxation year or period, unless an application for such a waiver or cancellation is filed within the time allowed, as set out below.

Application in respect of interest

6. Under section 94.1 of the TAA, interest that has accrued in any of the 10 calendar years before the calendar year in which the application is made may be waived or cancelled, regardless of the year in which the debt arose.

Application in respect of penalties or charges

7. An application for the waiver or cancellation of penalties or charges in respect of a taxation year or a period must be made on or before the day that is 10 calendar years after the end of the taxation year or period.

Principles governing the exercise of discretion

8. The reason for imposing penalties is not to generate additional revenue but rather to encourage compliance with the fiscal laws.

9. Where a failure to comply with a fiscal law has occurred, a penalty is imposed, subject to the Minister's discretion to waive or cancel the penalty under exceptional circumstances (examples of which are given below) and the policies regarding the imposition of penalties.

10. A debt owing automatically bears interest, subject to the Minister's discretion to waive or cancel the interest under exceptional circumstances.

11. Charges are automatically imposed under circumstances that require the payment of such amounts.

12. The discretion to waive or cancel interest, penalties or charges is exercised by the Minister only under exceptional circumstances. Such discretion may be exercised separately with regard to the interest, penalties or charges. Depending on the circumstances, one or more of those amounts may be waived or cancelled.

13. Where, for purposes of the waiver or cancellation of interest, penalties or charges, a person demonstrates the existence of an exceptional circumstance, only the interest, penalties or charges attributable to that circumstance can be waived or cancelled. Therefore, the person must be diligent in fulfilling the tax obligations as soon as possible under the circumstances; otherwise, the interest, penalties or charges may be maintained or applied with respect to a portion of the period for which the person is seeking the waiver or cancellation.

14. Action is taken on an application for the waiver or cancellation of interest, penalties or charges only if the person provides evidence that is considered satisfactory in respect of the person's situation.

15. The examples and factors referred to in this bulletin are not exhaustive and must not be construed as limiting the exercise of discretion provided for in section 94.1 of the TAA.

Circumstances and criteria for waiver or cancellation

16. The decision to waive or cancel interest, penalties or charges may be made in certain specific circumstances, for example:

- (a) in a spirit of fairness, especially in cases where the situation the person was in prevented the person from fulfilling the tax obligations on time (see points 18 to 21 below);
- (b) in cases where the interest, penalties or charges are so burdensome that the person is unable to pay the tax debt (see point 22 below); and
- (c) in cases involving certain exceptional administrative situations, where such a decision is often made because of equitable considerations in favour of all taxpayers or mandataries (see points 23 to 25 below).

17. It is important to note that where interest, penalties or charges result from an error made by Revenu Québec in applying the law when processing a file, such amounts are cancelled because, by law, they cannot be imposed, not because of the exercise of discretion under section 94.1 of the TAA. Furthermore, where the interest or penalties result from an error in applying the law, an opposition or appeal is possible, which is not the case where a decision is made under section 94.1 of the TAA (see point 27 below).

Exceptional situations not attributable to the person

18. The waiver or cancellation of interest, penalties or charges may be justified in any of the following situations that may have prevented the person from fulfilling the tax obligations appropriately or on time:

- (a) an exceptional situation beyond the person's control, such as:
 - a natural disaster, a flood or a fire;
 - a serious illness or accident, or a death in the immediate family;
 - an interruption of postal service; or
 - an error on an RL slip that the person's employer issued to the person, where the latter is neither a person related to the employer nor a director or an officer of the employer, if:
 - the person could not reasonably have noticed the error, and
 - the error affected a group of employees that includes the person and was due to a problem with the employer's computer system or a similar problem; or
- (b) an action attributable to Revenu Québec, such as:

- an error in any document or in any oral or written information provided by Revenu Québec; or
- an undue delay in processing.

Factors to be considered

19. The facts of each case must be considered, taking into account the justifications and evidence provided by the person.

20. The following factors are considered in assessing whether the circumstances of a case warrant the waiver or cancellation of interest, penalties or charges:

- the person has a history of compliance with tax obligations;
- the person has not knowingly allowed an outstanding balance to exist, resulting in the imposition of the interest, penalties or charges;
- the person has made reasonable efforts to comply with the law and has not been negligent or careless in conducting the person's affairs; and
- the person has acted quickly to remedy any delay or omission.

21. No one of the factors referred to above is determinative; they must be considered in their totality.

Inability to pay

22. The waiver or cancellation of interest, penalties or charges may be justified where the person is unable to pay. The inability to pay is determined further to a complete financial analysis conducted by the Direction générale du recouvrement in cases where a substantial portion of the amounts payable consists of interest, penalties or charges.

Special circumstances in which waiver or cancellation is possible

Fiscal policy or administrative practice

23. In cases where Revenu Québec assesses a person in order, for example, to recover an overpayment of a refund, the discretion to waive or cancel interest may be exercised pursuant to fiscal policy or administrative practice if Revenu Québec considers that the amount refunded or allocated was not overpaid on the basis of inaccurate or incomplete information provided by the person.

Wash transactions involving Québec sales tax

24. The discretion to waive or cancel interest and penalties may be exercised in a wash transaction situation involving Québec sales tax. Such is the case where a registrant supplier did not correctly invoice the tax on a taxable supply, and the recipient of the supply would have been entitled to a full input tax refund in respect of that tax had the recipient paid the tax. A wash

transaction may also occur where, within a closely related or associated group of persons, all of whom are engaged exclusively in commercial activities, the wrong entity collects and reports the tax or claims an input tax refund.

Where exceptional circumstances exist (such as those given as examples in this bulletin), all the interest and penalties may be waived or cancelled.

Absent such circumstances, the Minister may waive or cancel any portion of the interest and penalties that is in excess of 4% of the uncollected Québec sales tax. This administrative practice is intended to mitigate the harshness of the law imposing interest and penalties in cases where the tax was not collected, even though the State sustained no tax loss. The factors set out in points 19 to 21 above must be considered before any interest or penalties are waived or cancelled.

Carry back of amounts

25. The discretion to waive or cancel the interest and penalties provided for in sections 1044 and 1045 of the TA may be exercised where the interest and penalties appear to be unjustified given the circumstances. Such is the case, for example, where a taxpayer compensates for additional income further to a tax audit by carrying back losses from a subsequent year, despite the fact that other deductions, such as capital cost allowance, could have been claimed on the filing-due date for the fiscal return. However, the interest and penalties payable are not waived or cancelled if the only option the taxpayer had to reduce the income tax was to carry back losses.

The position taken by the taxpayer to justify the fact that the taxpayer's income was incorrectly reported must have a reasonable basis, and the factors set out in points 19 to 21 above must be considered before any interest or penalties are waived or cancelled.

An application made pursuant to this point is considered only if it is filed before the time limit for assessment has expired.

MAKING AN APPLICATION

26. Any person who wishes to apply for the cancellation or waiver of interest, penalties or charges may do so by completing form MR-94.1-V, *Application for the Cancellation or Waiver of Interest, Penalties or Charges*, where the application is made in respect of any Québec fiscal law other than the *Act respecting the Québec sales tax* (CQLR, c. T-0.1), or form FP-4288-V, *Application for the Cancellation or Waiver of GST/HST- and QST Related Interest or Penalties, or of QST Related Charges*. Any person operating a restaurant establishment who wishes to apply for the cancellation or waiver of a penalty related to the *Sommaire périodique des ventes* (periodic sales summary) may do so by completing form MR-94.1.R—V, *Application for the Cancellation or Waiver of Penalties Related to the Sommaire Périodique des Ventes*.

However, those forms do not have to be used. Such an application can also be made in the form of a letter that contains:

- the person's name and address;

- the person's social insurance number, Québec enterprise number (NEQ), or identification and file numbers, as applicable;
- the amount of the interest, penalties or charges at issue;
- the taxation year(s) or period(s) concerned;
- the laws concerned; and
- the grounds for the application.

Supporting documents must be included with the application.

DECISION

27. In accordance with the third paragraph of section 94.1 of the TAA, a decision regarding the exercise of the Minister's discretion to waive or cancel interest, penalties or charges is not subject to opposition or appeal.

REVIEW

28. Revenu Québec has established a review mechanism for decisions made pursuant to section 94.1 of the TAA. Any person who believes that such a decision is unfair or was arrived at on a wrong basis may apply for a review of the decision. The application must be made in writing, either by sending a letter or by completing and filing one of the forms referred to in the first paragraph of point 26 above, and must state the reasons why the person believes the decision is unfair or erroneous.

STATISTICAL SUMMARY

29. Under the fourth paragraph of section 94.1 of the TAA, the Minister is required to table in the National Assembly a statistical summary of the waivers and cancellations, within the same time limit as that provided for in section 76 of the *Act respecting the Agence du revenu du Québec* (CQLR, c. A-7.003) (AARQ) for the tabling of a management report and the financial statements of the Agence du revenu du Québec.

Under section 75 of the AARQ, not later than December 31 of each year, the Agence du revenu du Québec must file its financial statements and a management report with the Minister. According to section 76 of the AARQ, the Minister is required to table those documents in the National Assembly within 30 days of their receipt or, if the Assembly is not sitting, within 30 days of resumption.