

## Income Tax

**LAF. 31.1.1-1/R3**    **The Allocation of an Amount Payable to a Tax Debtor by a Public Body**

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Reference(s):    *Tax Administration Act* (CQLR, c. A-6.002), sections 31.1.1 to 31.1.5  
*Regulation respecting fiscal administration* (CQLR, c. A-6.002, r. 1),  
sections 31.1.5R0.1 to 31.1.5R10

*This version of interpretation bulletin LAF. 31.1.1-1 (formerly LMR. 31.1.1-1) supersedes the version of February 29, 2000. The bulletin was updated in view of the legislative and regulatory amendments that have been made since that date.*

### INTRODUCTION

1. The first paragraph of section 31 of the *Tax Administration Act*<sup>1</sup> (TAA) provides that when a person is both a creditor and a debtor under a fiscal law, the Minister of Revenue may apply a refund owing to the person under a fiscal law to the payment of the debt of that person. Such an allocation can only be made where both the credit and the debt result from the application of fiscal laws. Section 31.1.1 of the TAA is another matter.

2. Section 31.1.1 of the TAA provides for an allocation mechanism that facilitates the recovery of tax debts. Under that section, a public body that is about to pay a sum of money to a person owing an amount exigible under a fiscal law may be required to send the Minister all or part of that sum so that the Minister may allocate it to the payment of the tax debt of that person.

### APPLICATION OF THE ACT

#### AMOUNTS THAT CANNOT BE ALLOCATED

3. Amounts that cannot be allocated include any amount or the portion of any amount, payable by a public body, that is exempt from seizure (such as income security benefits), that constitutes an indemnity (such as an expropriation indemnity), that constitutes the reimbursement of an insured service (such as certain amounts reimbursed by the Régie de l'assurance maladie du Québec) or that belongs to a class of payments determined by the Québec government under section 35 of the

<sup>1</sup> 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.

*Financial Administration Act* (CQLR, chapter A-6.001) (no classes of payments have been determined by the government to date).

4. Likewise, no allocation can be made by the Minister where there is an objection or an appeal pending in respect of an amount exigible under a fiscal law and the debtor of the amount has furnished security referred to in section 10R1 of the *Regulation respecting fiscal administration* (Regulation). This restriction also applies to a debtor who has entered into a payment agreement in accordance with section 9.2 of the TAA, unless the agreement expressly provides for the application of the allocation measure.

5. Finally, according to section 12.0.3 of the TAA, if an unpaid amount is the subject of an objection, an appeal or a summary appeal, then during such time as an objection, appeal or summary appeal subsists in relation to an assessment, determination or decision referred to in section 12.0.2 of the TAA or before the expiry of the time limit for making an objection or bringing an appeal or summary appeal, the Minister cannot apply, to the payment of the unpaid amount, any amount payable to the person by a public body. However, where the debtor is a large corporation, the Minister can make such an allocation in respect of one half of the unpaid amount. The amounts covered by said section 12.0.3 are unpaid amounts under the *Taxation Act* (CQLR, chapter I-3) and certain specific laws, other than those dealing with consumption taxes or source deductions.

## **PUBLIC BODIES SUBJECT TO THE ALLOCATION MEASURE**

6. Public bodies subject to the allocation measure provided for in section 31.1.1 of the TAA are identified in section 31.1.4 of the TAA and include the government and its departments, general and vocational colleges, school boards, the Comité de gestion de la taxe scolaire de l'île de Montréal, and public institutions and health and social services agencies within the meaning of the *Act respecting health services and social services* (CQLR, chapter S-4.2). Also subject to that measure are bodies listed in the additional notes accompanying the financial statements of the government published yearly under the *Financial Administration Act*.<sup>2</sup> However, bodies carrying on trust activities and government businesses or bodies with share capital are not subject to the allocation measure, except as concerns the amounts they pay to their employees and suppliers of goods or services. As for the Société immobilière du Québec, it is a public body entirely subject to the allocation measure.

## **ALLOCATION PROCEDURE**

7. To facilitate the application of section 31.1.1 of the TAA, every public body referred to in section 31.1.4 of the TAA that is about to make a payment (or, where applicable, its agent) must inform the Minister thereof beforehand according to the terms and conditions prescribed by the Regulation. Those terms and conditions primarily concern the information to be communicated, the time allowed for communications and their frequency, and the mechanisms for informing taxpayers

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<sup>2</sup> The consolidated financial statements of the Québec government are presented in section 2 of volume 1 of the public accounts and are published on the website of the Ministère des Finances du Québec ([www.finances.gouv.qc.ca](http://www.finances.gouv.qc.ca)).

affected by the allocation measure. Under the Regulation, there is also an obligation to ensure that the confidentiality of the information communicated is preserved and that the persons who, in their organization, are authorized to send or receive such information are identified. The Regulation also provides for the destruction of the information obtained as soon as it is no longer required for allocation purposes.

**8.** The Regulation clearly identifies the information that a public body is required to send daily to the Minister and the information that the Minister sends to a public body at the time of an allocation. The information that must be sent to the Minister by a public body or, where applicable, by its agent varies based on whether or not the beneficiary or creditor of the amount payable is a natural person.

**9.** Where an amount is to be paid by a public body to a person other than a natural person, the public body or its agent must send the following information to the Minister:

- (a) the name of the person;
- (b) the civic address of its head office or its principal establishment;
- (c) the user number attributed to it by the Minister, as the case may be;
- (d) the business number assigned to the person under the *Act respecting the legal publicity of enterprises* (CQLR, chapter P-44.1), as the case may be;
- (e) the reference attributed to the payment by the body or its agent; and
- (f) the amount that is to be paid to the person.

**10.** Likewise, where an amount is to be paid to a natural person, the following information must be sent to the Minister:

- (a) the name of the person;
- (b) the person's civic address;
- (c) the person's social insurance number;
- (d) the business number assigned to the person under the *Act respecting the legal publicity of enterprises*, as the case may be;
- (e) the reference attributed to the payment by the body or its agent; and
- (f) the seizable portion of the amount that is to be paid to the person.

**11.** As soon as the Minister is informed that a person owing an amount exigible under a fiscal law is about to receive a sum of money from a public body that is subject to the allocation measure, the Minister notifies the body or, where applicable, its agent of the amount that must be sent to the Minister. The Minister's demand continues in effect until the tax debt is extinguished.

**12.** Upon receipt of the Minister's demand, the public body must, within the following eight days or on the anticipated date of payment, whichever comes last, send to the Minister the amount indicated to be allocated.

**13.** Finally, the Regulation also prescribes the terms and conditions for informing taxpayers affected by an allocation. Thus, the Minister must inform every natural person owing an amount exigible under a fiscal law that an allocation may be made in relation to the person's debt. Furthermore, the public body or its agent must notify the person to whom a payment was to have been made that an allocation was made by the Minister. Also, the Minister must send the tax debtor a notice setting out the details of the allocation.