

Income Tax

LAF. 33-1/R1 **Inalienability and exemption from seizure of amounts owing by the State in respect of a fiscal law**

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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), section 33

This version of interpretation bulletin LAF. 33-1 (formerly LMR. 33-1) supersedes the version of August 31, 1992. The bulletin was updated to take into account legislative amendments made since that date. The bulletin was revised to clarify the position set out herein. In addition, some changes in respect of style and conformity were made to ensure technical accuracy.

This bulletin sets out Revenu Québec's policy regarding the inalienability and exemption from seizure of amounts owing by the State in respect of a fiscal law. The bulletin applies with respect to income taxes, consumer taxes, source deductions and employer contributions.

DEFINITION

1. In this bulletin, the term "person" means a natural person, a corporation, a partnership, a trust, a government department, a body, a succession or any other entity that is a person within the meaning of a fiscal law.

APPLICATION OF THE ACT: PRINCIPLES

2. The first paragraph of section 33 of the *Tax Administration Act*¹ (hereinafter the "TAA") provides that every amount owing by the State in respect of a fiscal law as a refund is inalienable and unseizable.

3. However, the second and third paragraphs of that section provide exceptions to the rule of inalienability provided for in the first paragraph of that section.

4. The policy of Revenu Québec regarding the rule of inalienability and the exceptions thereto is set out in points 5 through 15 of this bulletin, and its policy regarding the rule of exemption from seizure is set out in points 16 through 19 of this bulletin.

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.

INALIENABILITY

5. In compliance with the rule of inalienability established in the first paragraph of section 33 of the TAA, Revenu Québec refuses to send a refund cheque to anyone other than the person to whom the refund is owing. Revenu Québec also refuses to deposit a refund owing to a person in another person's bank account.

6. Sending a refund cheque to someone other than the person to whom an amount is owing by the State or depositing a refund owing to a person in another person's bank account amounts to doing by indirect means what the first paragraph of section 33 of the TAA does not allow to be done.

7. The following are examples of circumstances in which this policy applies:

- (a) An accounting firm or a law firm asks Revenu Québec to send a refund cheque of one of its clients to the firm.
- (b) A financial institution asks Revenu Québec to send a refund cheque of one of its clients to the institution, because the institution is a creditor of the client.
- (c) A person specialized in the preparation of income tax returns asks that a refund cheque of one of the person's clients be sent by Revenu Québec to the person, because the client assigned the right to the refund to the person.
- (d) An insurer asks Revenu Québec to send it a refund cheque of one of its policyholders, because the policyholder assigned the right to the refund upon settlement of a loss.
- (e) A person asks that the person's refund cheque be sent by Revenu Québec to the person's financial institution, because the person assigned the right to the refund to the financial institution as security for a loan.
- (f) A trustee asks that a refund cheque of a person who has filed a proposal or a notice of intention to file a proposal under the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) be sent by Revenu Québec to the trustee.
- (g) A monitor asks that a refund cheque of a person in respect of whom an order has been made in accordance with the *Companies' Creditors Arrangement Act* (R.S.C. 1985, c. C-36) be sent by Revenu Québec to the monitor.

8. In all the circumstances described in point 7, Revenu Québec cannot grant the requests since an amount owing by the State in respect of a fiscal law as a refund is inalienable by virtue of the first paragraph of section 33 of the TAA.

Correspondence sent to a third person

9. Where requested to do so in writing, Revenu Québec may, at its discretion, send correspondence relating to a person's tax file, including any notices of assessment, to another person's address. However, in such a case, any refund cheques owing to the person are sent by Revenu Québec to the person's address or, if the person is registered for direct deposit, the refunds are deposited by Revenu Québec in the person's bank account.

Exceptions to the rule of inalienability

10. The second paragraph of section 33 of the TAA provides that the refund or right to a refund of an amount owing by the State by reason of the application of a fiscal law may be alienated to a person other than the person who is entitled to the refund or who may exercise the right if provision is expressly made therefor in the fiscal law and the alienation is made in accordance with that law.

11. For example, by virtue of section 1055.2 of the *Taxation Act* (CQLR, chapter I-3; hereinafter the “TA”), a corporation may assign or hypothecate the right to claim an amount payable to it under the TA. However, the assignment or hypothec is not binding on the State and, as a result, the following rules apply:

- the Minister retains discretion to pay or not to pay the amount to the assignee or creditor;
- the assignment or hypothec does not create any liability of the State to the assignee or creditor; and
- the rights of the assignee or creditor are subject to the rights conferred on the State by section 31 of the TAA and any right of compensation (set-off) of which the State may avail itself.

12. The third paragraph of section 33 of the TAA provides that, notwithstanding the first paragraph of that section, the Minister may authorize a person to transfer a refund to the person who, at the end of the taxation year for which the person claims the refund, was that person’s spouse.

13. Thus, Revenu Québec may, at its discretion, grant a person’s request made in writing to use the income tax refund to which the person is entitled to pay the income tax balance owing by his or her spouse. However, in accordance with section 31 of the TAA, the person’s income tax refund may first be allocated to the payment of all the person’s fiscal and other debts owing to the State, before the balance of the refund, if any, is used to pay the income tax balance of his or her spouse.

Incapable person

14. The rule of inalienability provided for in the first paragraph of section 33 of the TAA does not apply to a person incapable of administering his or her property who is represented

- by a mandatary who is named in a mandate given by the person in anticipation of his or her incapacity and homologated by the court, pursuant to articles 2166 et seq. of the *Civil Code of Québec* (hereinafter the “CCQ”); or
- by a curator or tutor, where protective supervision under the CCQ has been instituted for the person.

15. In the circumstances described in point 14, correspondence relating to the incapable person’s tax file, including any notices of assessment, as well as any refund cheques owing to the incapable person, are sent by Revenu Québec to the mandatary, tutor or curator.

EXEMPTION FROM SEIZURE

16. In compliance with the rule of exemption from seizure established in the first paragraph of section 33 of the TAA, Revenu Québec contests any legal proceeding requiring it to remit a refund to someone other than the person to whom the refund is owing.

17. Revenu Québec also refuses to grant a trustee's request that a bankrupt person's refund cheque be sent to the trustee pursuant to the *Bankruptcy and Insolvency Act*. Under that Act, an amount exempt from seizure under a provincial law is not included in the property of a bankrupt person that is divisible among the person's creditors.

18. However, in the case of a bankrupt corporation that has not been dissolved, Revenu Québec may grant a trustee's request that a refund cheque payable to the corporation be sent to the trustee.

19. Where a person is bankrupt or in the circumstances described in paragraph (f) or (g) of point 7 of this bulletin, a refund to which the person is entitled may be allocated to the payment of all the person's fiscal and other debts owing to the State, in accordance with section 31 of the TAA. In such a case, the balance of the refund, if any, is remitted to the person, provided that, in accordance with section 30.3 of the TAA, on the day on which the refund was applied for, the returns and reports to be filed under a fiscal law for the periods or taxation years of the person ending on or before the date of bankruptcy or insolvency, as the case may be, had been filed and an amount equal to the amounts payable before that date for those periods or taxation years had been paid by the person.