

## Consumer Taxes

**TAB. 10**                    **Refund of an Amount Equal to the Tobacco Tax to a Person Other than a Consumer for Theft, and Accidental Destruction or Accidental Loss of Tobacco**

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Reference(s):            *Tobacco Tax Act* (R.S.Q., c. I-2), sections 11, 11.1 and 17.2 to 17.4  
*An Act respecting the Ministère du Revenu* (R.S.Q., c. M-31), section 21

This bulletin states how the *Tobacco Tax Act* (the “Act”) and the *Act respecting the Ministère du Revenu* should be interpreted in respect of the possibility a person has of obtaining the refund of an amount equal to the tobacco tax which that person paid in respect of tobacco subsequently stolen, or accidentally destroyed or lost.

### Legislative Provisions

1. Section 17.2 of the Act provides that a collection officer must collect, as a mandatary of the Minister, an amount equal to the tax provided for in section 8 of the Act from every person (the recipient) to whom he sells, delivers or causes to be delivered tobacco in a package identified in accordance with section 13.1 of the Act, unless the delivery of the tobacco is made outside Québec for consumption outside Québec and is authorized by regulation or unless the collection officer is exempted therefrom pursuant to an agreement made with the Minister under section 17 of the Act.
2. The recipient is directly subject to the obligation to collect an amount equal to the tax, or the tax itself, as the case may be, in respect of tobacco so acquired which he sells or delivers or causes to be delivered in Québec.

### Theft

3. If the recipient paid the amount equal to the tax to the collection officer, or directly to the Ministère, in respect of the tobacco and the tobacco is subsequently stolen without the recipient having directly sold it or delivered it, then the recipient is entitled to a refund of the amount equal to the tax he paid in respect of that tobacco.
4. To be allowed such a refund, the recipient must establish, among others, to the satisfaction of the Ministère that:
  - he meets all the conditions and obligations provided for in the Act;
  - the tobacco was acquired exclusively for purposes of resale;

- a theft occurred, as well as the facts and circumstances of that theft (quantity and type of tobacco product stolen, date of the theft, etc.);
- the theft was reported to the police;
- the theft is not attributable to fault or negligence on the recipient's part. In this respect, it should be noted that a theft committed by an employee of the recipient is not necessarily attributable to fault or negligence on the recipient's part;
- he was not indemnified in respect of the amount equal to the tax for which he applies for a refund.

### **Accidental Destruction or Accidental Loss**

5. If the recipient paid the amount equal to the tax to the collection officer, or directly to the Ministère, in respect of the tobacco and the tobacco is, subsequently and accidentally, destroyed or lost without the recipient having directly sold it or delivered it, then the recipient is entitled to a refund of the amount equal to the tax he paid in respect of that tobacco.

6. To be allowed such a refund, the recipient must establish, among others, to the satisfaction of the Ministère that:

- he meets all the conditions and obligations provided for in the Act;
- the tobacco was acquired exclusively for purposes of resale;
- destruction or loss of tobacco occurred, as well as the facts and circumstances of that destruction or loss (quantity and type of tobacco destroyed or lost, cause, date, etc.);
- the destruction or loss is not attributable to fault or negligence on the recipient's part. In this respect, it should be noted that the destruction or loss of tobacco caused by an employee of the recipient is not necessarily attributable to fault or negligence on the recipient's part;
- he was not indemnified in respect of the amount equal to the tax for which he applies for a refund.

### **Documents Required**

7. A recipient who makes an application for refund must make available to the Ministère the accounting registers, inventory documents or inventory adjustment documents, as well as any other document that may justify the amount of the refund application. The Ministère may also require the filing of any document it deems useful for determining the facts and circumstances of the theft, destruction, or loss of tobacco, among which is the police report.

8. This bulletin applies both to the past and the future.