

Income Tax

IMP. 1051-1/R3 Refund of Tax, Interest or Penalties

Date of publication: August 31, 2000

Reference(s): *Taxation Act* (R.S.Q., c. I-3), section 1051

This bulletin cancels and replaces bulletin IMP. 1051-1/R2 of September 30, 1994, and has effect from June 17, 1994, in respect of an application for refund relating to taxation year 1985 or a subsequent taxation year.

This bulletin gives the policy of the Ministère du Revenu concerning the applications for refund of tax, interest or penalties within the scope of the exercise of the discretionary power granted to the Minister by the first paragraph of section 1051 of the *Taxation Act* (the “Act”), in cases other than those mentioned in paragraph a.1 of subsection 2 of section 1010 of the Act.

APPLICATION OF THE ACT

Discretionary Power

1. The first paragraph of section 1051 of the Act provides that the Minister may refund tax, interest or a penalty where the taxpayer applies for a refund after the expiry of the time limits provided for in the second paragraph of that section.
2. This is a discretionary power granted to the Minister by the legislator.

Exercise of the Discretionary Power Where an Application for Refund is Made by a Taxpayer Other than an Individual or a Testamentary Trust

3. In general, the Minister only exercises this discretionary power in respect of an application for refund made within the following time limits:
 - (a) within the three years following the end of the three years following the end of the taxation year concerned;
 - (b) within the four years following the end of the four years following the end of the taxation year concerned where the taxpayer is, at the end of that year, a mutual fund trust or a corporation other than a Canadian-controlled private corporation.

4. Furthermore, the Ministère will agree to act upon an application for refund mentioned in the preceding paragraph if the taxpayer meets one or the other of the following conditions:

- (a) the taxpayer filed an original fiscal return and was never assessed;
- (b) the taxpayer was assessed on the basis of evidence in the absence of an original fiscal return;
- (c) the taxpayer filed an application to amend his original fiscal return and the Ministère agreed to assess the taxpayer. It should be noted that in addition to the cases where the Act obliges the Minister to assess following an application to amend a fiscal return (example: section 1012 of the Act), the Ministère is always at discretion to assess following the filing of an application to amend a fiscal return. The current version of bulletin IMP. 1010-2 discusses the circumstances in which the Minister intends to exercise his discretion and assess a taxpayer who files an amendment to his original fiscal return after the expiry of the deadlines provided for in paragraphs a, a.0.1 and a.1 of subsection 2 of section 1010 of the Act.

Exercise of the Discretionary Power Where an Application for Refund is Filed by a Taxpayer who is an Individual or that is a Testamentary Trust

5. The Minister intends to act upon an application for refund made by an individual or a testamentary trust in respect of taxation year 1985 or a subsequent taxation year. That application for refund may be made upon filing of the original fiscal return or upon filing of an application for amending that return.

The current version of bulletin IMP. 1051-2 discusses the Ministère's policy concerning a refund application filed by an individual or a testamentary trust in respect of taxation year 1985 or a subsequent taxation year.

Exercise of the Discretionary Power Where a Reassessment is Established Under Section 1010.0.2 or 1010.0.3 of the Act

6. The Minister intends to exercise his discretion to refund a taxpayer where a reassessment is established under section 1010.0.2 or 1010.0.3 of the Act and the taxpayer paid as tax, interest or penalty an amount greater than the amount that was exigible.

Certain Situations in Which the Minister does not Intend to Act Upon a Refund Application

7. In general, the Minister will not process an application for refund that constitutes an application to increase a deduction for which the taxpayer had not initially elected to claim the maximum allowable amount. In such cases, the bulletins specifying whether or not the Minister will exercise his power to reassess (for example, the current versions of bulletins IMP. 130-1 and IMP. 1010-2) should be consulted.

8. Applications for refund made for the purpose of retroactive fiscal planning are also refused.

9. Where a person becomes bankrupt or files a proposal or notice of intention to file such a proposal, section 30.3 of the *Act respecting the Ministère du Revenu* provides that any refund applied for by the person for a taxation year ending on or before the date of bankruptcy or the date of filing of the proposal or notice of intention to file such a proposal, as the case may be, is equal to zero.

This rule does not apply where that person is in a situation in which the Minister intends to exercise his discretionary power to refund, as otherwise provided for in this bulletin and on the day on which the refund is 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 the date of filing of the proposal or notice of intention to file such a proposal, as the case may be, were filed and where an amount equal to the amounts payable before that date by the person for those periods or taxation years was paid.

Exceptions

10. Despite the expiry of the time limits within which the Minister intends to exercise his discretion in the case of a taxpayer other than an individual or a testamentary trust, and despite the fact that an application for refund is filed in respect of a taxation year before 1985 in the case of an individual or a testamentary trust, the Minister exceptionally assents to an application for refund in the following situations:

• Payment on filing of the original return

By way of exception, the Minister exercises his discretion and refunds a taxpayer who files an original fiscal return after the expiry of the time limits mentioned in article 3 above (taxpayer other than an individual or a testamentary trust) or 5 above (individual or testamentary trust, i.e. in respect of a taxation year before 1985), as the case may be, if that taxpayer has never been assessed and if he encloses with his return a payment that turns out to be greater than the balance due established in the notice of assessment issued following the filing of the original fiscal return.

In this situation, the refund will not exceed the amount of the payment on filing of the original fiscal return. Indeed, in such a case, the Minister will only exercise his discretion to refund in respect of amounts he did not have in his possession at the statutory date of filing of the return relating to the taxation year covered by the refund. For example therefore, amounts remitted to him under section 1015, 1025, 1026 or 1029 of the Act are excluded from refund.

• Payment on receipt of an assessment based on evidence and refund assigned to the payment of an assessment based on evidence

By way of exception, the Minister exercises his discretion and refunds a taxpayer who, following the issue of an assessment based on evidence, files an original fiscal return after the expiry of the time limits mentioned in article 3 above (taxpayer other than an individual or a testamentary trust) or 5 above (individual or testamentary trust, i.e. in respect of a taxation year before 1985), as the case may be, in the following situations:

- (a) if the taxpayer paid the duties claimed in the assessment based on evidence and if it turns out that the payment is greater than the duties determined in the reassessment issued after filing of the original fiscal return; or
- (b) if the Minister assigned a refund owing to the taxpayer to the payment of an assessment based on evidence, and if the reassessment issued after the filing of the original fiscal return determines duties payable that are less than the amount assigned.

In the latter situations, the refund will not exceed the amount of the payment made by the taxpayer in respect of the assessment based on evidence or the amount assigned to the payment of the assessment based on evidence on the same grounds as those set out previously in relation to the first situation of exception.

APPLICATION OF THE SECOND PARAGRAPH OF SECTION 1051 OF THE ACT

Statutory Obligation

11. The second paragraph of section 1051 of the Act provides that the Minister shall make the refund of tax, interest or penalties paid in excess for a taxation year if the taxpayer applies for it when filing his original fiscal return, or if the Minister agrees to reassess following an application to amend an original fiscal return that is filed with him:

- (a) within the three years following the end of the taxation year concerned;
- (b) within the four years following the end of the taxation year concerned where the taxpayer is, at the end of that year, a mutual fund trust or a corporation other than a Canadian-controlled private corporation.

POWER TO ASSESS

12. It should be mentioned that the Minister's power to refund in accordance with section 1051 of the Act is separate from the power to assess.

Before refunding, though, the Minister must be able to assess in order to be able to first determine the amounts paid in excess.

Consequently, when the time limits to reassess have expired, the Minister may ask a taxpayer to send him the waiver provided for in subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the Act, failing which, the taxpayer cannot be refunded.

Terms and Conditions for Exercising the Power to Assess

13. For the purposes of this bulletin, the Minister exercises his power to assess according to the following terms and conditions:

- (a) the Minister must assess every taxpayer who has filed an original fiscal return and who has never been assessed, notwithstanding that taxpayer's entitlement to a refund;

- (b) the Minister must reassess every individual or testamentary trust who or which files an application to amend his or its original fiscal return for taxation year 1985 or a subsequent taxation year, unless that application corresponds to that which is mentioned in article 7 above, in which case the appropriate bulletins should be consulted in order to determine if the Minister is to exercise his discretionary power, or if this application corresponds to one of those mentioned in articles 8 and 9 above;
- (c) the Minister intends to reassess a taxpayer, when the conditions for the application of section 1010.0.2 or 1010.0.3 of the Act are met and the taxpayer paid as tax, interest or penalty an amount greater than the amount exigible;
- (d) pursuant to the discretionary power granted to him by one or the other of the provisions of subsection 2 of section 1010 of the Act, the Minister may reassess any taxpayer who was assessed on the basis of evidence and who is entitled to a refund.

In the latter case, the Minister may reassess the taxpayer even if the time limits in which to do so have expired, if he obtains from the taxpayer the notice of waiver referred to in subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the Act, in the circumstances described in the current version of bulletin IMP. 1010-2;

- (e) the Minister may reassess, pursuant to the discretionary power granted to him by one or the other of the provisions of subsection 2 of section 1010 of the Act, in every other case. In this respect, the Ministère's bulletins should be consulted in order to determine in which cases the Minister will reassess a taxpayer.

Lastly, except for cases in which the Minister is bound by law to issue a notice of assessment, the Minister must not assess a taxpayer he does not intend to refund.