

Income Tax

IMP. 1051-2/R1 Tax fairness: refunds applied for after December 31, 2004
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Reference(s): *Taxation Act* (R.S.Q., c. I-3), ss. 1010 and 1051

This version of bulletin IMP. 1051-2 supersedes the version of April 30, 1996, for applications or requests made after December 31, 2004. This revision is further to the announcement made by the Minister of Finance of Québec in the Budget Speech of March 30, 2004, concerning refund applications made after December 31, 2004, in respect of a taxation year for which the assessment period has expired. The scope of the announcement was explained in bulletin SPECIAL 181, dated March 31, 2004.

This tax fairness measure applies to refund applications or adjustment requests that are made by individuals or testamentary trusts after December 31, 2004, and results in the reduction of the balance due. Any application or request made after that date must be in respect of a taxation year for which the assessment period, provided for in paragraph *a* of subsection 2 of section 1010 of the *Taxation Act* (TA), has expired, and which ends in one of the 10 calendar years preceding the calendar year in which the application or request is made.

APPLICATION OF THE ACT

1. Pursuant to subsection 1 of section 1010 of the TA, the Minister of Revenue may, at any time, assess tax, interest and penalties. Furthermore, under subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the TA, the Minister may also again assess such amounts and reassess, at any time, if the taxpayer has filed with the Minister a waiver in the prescribed form. As a corollary to that power to assess, section 1051 of the TA gives the Minister the authority to refund an overpayment to the taxpayer. The second paragraph of section 1051 of the TA states that the Minister is obliged to do so if such an application is made by the taxpayer within a specified time period.

2. A refund application made by an individual or a testamentary trust is acted upon by the Ministère, provided the application is made within the context described in this bulletin.

Application of the measure

3. This measure applies to tax matters, including requests for an adjustment of refundable tax credits (such as the tax credit for taxi drivers and taxi owners, and the Québec sales tax (QST) credit), of non-refundable tax credits, or of other deductions. It also applies in respect of property tax refund applications. It should be kept in mind, however, that the measure may be overridden by certain provisions of the TA, such as section 1029.6.0.1.2 of the TA, which provides a time limit for filing the initial request in respect of certain refundable tax credits (that is, refundable tax credits allowed in a business context), and section 1029.8.21.3.1 of the TA, which deals with refundable tax credits allowed in the context of scientific research and experimental development.

4. Furthermore, where the effect of a reassessment issued under the TA is an increase in the amount of the benefit under the parental wage assistance (PWA) program, the Minister adjusts that benefit accordingly. Thus, an adjustment is made to the benefit for the sole purpose of taking into account the tax reassessment.

Non-application of the measure

5. The Minister will not process any refund application that constitutes an application to increase a deduction, where the taxpayer initially elected not to claim the maximum amount allowed. For example, the Minister will not reassess a taxpayer who applies to increase the amount of capital cost allowance claimed in a year in respect of which the assessment period has expired. This exception covers cases in which the taxpayer was aware of the amount of the deduction to which the taxpayer was entitled and decided to claim only a portion thereof for the year concerned in order to spread the total amount of the deduction over a number of years.

6. Refund applications made for the purpose of retroactive tax planning are also denied.

7. In cases in which a person becomes bankrupt, or files a proposal or notice of intention to file such a proposal, the Minister will not act upon the person's refund application for a reporting period or 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. This is provided for in section 30.3 of the *Act respecting the Ministère du Revenu* (R.S.Q., c. M-31; hereinafter "AMR").

8. However, as provided in the same section 30.3 of the AMR, the Minister will act upon a refund application made by such a taxpayer where, 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.

9. As for applications for a refund of overpaid Québec Pension Plan (QPP) contributions, the Ministère's policy remains unchanged; the time limits provided for in the *Act respecting the Québec Pension Plan* (R.S.Q., c. R-9) still apply.

10. Likewise, the time periods within which applications can be made for QST rebates for employees and partners, or for financial assistance for certain older persons and families under the

shelter allowance program remain unchanged; the tax fairness measure set out in this bulletin does not apply to these matters.

PROCEDURE

11. Where a refund application or an adjustment request that results in the reduction of the balance due would have been granted had it been filed within the required time limits, the Minister will make a refund to any individual or testamentary trust that makes such an application or request after December 31, 2004, provided the application or request concerns a taxation year ending in one of the 10 calendar years preceding the calendar year in which the application or request is made, regardless of whether the application is made upon filing an original fiscal return or whether a request for an adjustment of such a return is filed. The procedure differs slightly according to the origin of the application or request. It should be noted that an original return filed further to an assessment issued on the basis of *indicia* must be processed according to the procedure described in point 13 of this bulletin.

12. Where an application is made by filing an original fiscal return after the expiration of the time periods within which it is usually expected that the Minister's discretionary authority to make refunds will be exercised,

- (a) the Minister must examine the return, assess the tax for the year and any interest or penalties under section 1005 of the TA and, regardless of whether the Minister determines that a balance is payable or that the individual or testamentary trust is entitled to a refund, send a notice of assessment, in accordance with section 1008 of the TA, to the person who filed the fiscal return (there being no need to have a waiver of prescription signed);
- (b) the Minister's discretionary authority to make refunds under the first paragraph of section 1051 of the TA is exercised.

Under section 93.1.1 of the AMR, the individual or testamentary trust may object to the assessment issued by the Minister.

13. Where a request for an adjustment of a return is filed after the expiration of the time period provided for in paragraph *a* of subsection 2 of section 1010 of the TA,

- (a) the Minister examines the request of the individual or testamentary trust and determines, based on the evidence submitted, whether the individual or trust is in fact entitled to a refund;
- (b) if it is determined that a refund should be granted, the individual or testamentary trust is asked to file with the Minister a waiver in the prescribed form;
- (c) once the waiver is received, the Minister issues a notice of assessment, under subparagraph ii of paragraph *b* of subsection 2 of section 1010 of the TA, and makes the refund pursuant to the Minister's discretionary authority under the first paragraph of section 1051 of the TA.

In view of section 93.1.7 of the AMR, the individual or testamentary trust is not entitled to object to the assessment so issued.

14. Where, because of a refund application made by an individual or a testamentary trust, the Minister is required to make an adjustment increasing the tax, interest or penalties for a year for which the assessment period has expired, the Minister, in order to act upon the application, must obtain from the individual or testamentary trust a notice of waiver in respect of that other year, so that a notice of assessment may consequently be issued. Thus, obtaining a notice of waiver, with regard to the elements of the assessment which the Minister wishes to increase, constitutes a condition for the exercise of the Minister's discretionary authority to make a refund for the year covered by the application sent to the Minister.

15. Where a refund application made by a spouse has an impact on the computation of deductions or amounts computed on the basis of family income (such as the property tax refund or the income tax reduction for families), a portion of which may be claimed by each spouse, the procedure to be followed must be determined.

16. In the event that, further to an adjustment request, the amount of the property tax refund (PTF), for example, is reduced, even though the overall adjusted amount results in a refund, the individual who filed the adjustment request must incur that reduction up to the amount of the PTF received by the individual. The remainder of the reduction cannot be recovered from the individual's spouse because that claim is prescribed.

17. However, where the adjustment request results in an increase in the PTR, the individual and his or her spouse must determine the share that each of them is claiming. The individual is required to ask his or her spouse to contact the Ministère to claim the additional amount, or to authorize the Ministère to contact his or her spouse to confirm the share agreed upon.

18. In all of these cases, it rests with the individual or testamentary trust to prove that the application or request is well-founded by submitting to the Minister full evidence in support of the application or request.

19. Where applicable, interest on such refunds is computed according to the general rules provided for in Title VI of Book IX of Part I of the TA.