

Consumer Taxes

LMR. 21-2 **Application for Refund Referred to in Section 21 of the Act respecting the
Ministère du Revenu**

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Reference(s): *An Act respecting the Ministère du Revenu* (R.S.Q., c. M-31), sections 21, 21.1, and
31
Taxation Act (R.S.Q., c. I-3), sections 1057 to 1079

This bulletin states how the *Act respecting the Ministère du Revenu* (AMR) applies to the processing of an application for refund by a person or on his behalf.

APPLICATION OF THE ACT

1. The Minister agrees to process an application for refund pertaining to transactions made during a determined period if the taxpayer has never been assessed in respect of those transactions, despite the fact that this period was the subject of an assessment to which the taxpayer did or did not object.
2. The Minister also agrees to process an application for refund where, at the time of the audit of the validity of the application, it appears that an assessment for exigible duties must be issued for amounts other than those claimed.
3. For the purposes of article 2 above, the application for refund and the assessment of exigible duties must be processed separately and be the subject of separate reports.
4. When an application for refund is allowed in whole or in part and the taxpayer is a debtor towards the government under a fiscal law or a non-fiscal law, the Minister may apply such refund or part thereof to the payment of the debt of that person in accordance with the provisions of section 31 AMR.
5. The Minister may also withhold the refund to which a person is entitled if that person has not filed all the returns and reports that he was bound to file under a fiscal law or a regulation made under such a law, in accordance with the provisions of section 30.1 AMR.
6. In other respects, section 21.1 AMR was amended by section 10 of chapter 36 of the Statutes of Québec 1995, in order to provide that a person having made an application for a refund under section 21 AMR and having received no response from the Minister may, at any time after the expiry of 180 days following the day of mailing of the application, send a notice of objection in

respect of the application and sections 1057 to 1079 of the *Taxation Act* apply, adapted as required.

7. Consequently, where a taxpayer files an application for refund after June 16 1994, the Minister will inform the taxpayer, within 180 days following the day of mailing of the application, of his decision:

- (a) to disallow in whole or in part the refund of the amount claimed by issuing a notice of assessment to the taxpayer under section 25 AMR;
- (b) to allow the entire refund of the amount claimed;
- (c) to allow in whole or in part the refund of the amount claimed (for a partial refund, a notice of assessment will be issued under section 25 AMR) and to apply that refund or part thereof to the payment of a debt in accordance with section 31 AMR.

8. Thus, in every case where an application for refund is allowed in part only or is disallowed, the Minister issues a notice of assessment under the first paragraph of section 25 AMR. The taxpayer therefore, may object to the assessment issued to him within the period prescribed by the first paragraph of section 1057 of the *Taxation Act* (See the current version of bulletin LMR. 21.1-1).

9. The objection referred to in article 8 above cannot bear on the Minister's decision to apply the refund to the payment of a debt in accordance with section 31 AMR.