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## Consumer Taxes

Number: LAF. 94.1-1/R7

Date: July 23, 2013

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Act(s): *Tax Administration Act (L.Q., c. A-6.002), section 94.1*

Subject: **Waiver or Cancellation of Interest, Penalties or Charges**

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*This version of interpretation bulletin LAF. 94.1-1 (formerly LMR. 94.1-1) supersedes the version of June 16, 2010. The bulletin was revised primarily to take into account, regarding the time limit for filing an application for the cancellation or waiver of interest payable under a fiscal law, the decision rendered by the Federal Court of Appeal on June 2, 2011, in *Bozzer v. Canada (2011 FCA 186)*.*

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This bulletin applies to the interest and penalties provided for by a fiscal law in respect of income tax, consumption taxes, source deductions and employer contributions. It also applies to the charges (including fees) provided for in sections 12.0.3.1, 12.1 and 12.2 of the *Tax Administration Act*<sup>1</sup> (hereinafter the "TAA").

However, this bulletin does not cover the penalties related to any acts or omissions made knowingly, wilfully or in circumstances equivalent to gross negligence, since the imposition of such penalties is subject to a prior review based on specific criteria.

### APPLICATION OF THE ACT

#### PRINCIPLE

1. Pursuant to section 94.1 of the TAA, the interest, penalties or charges payable further to the application of a fiscal law may be waived or cancelled in whole or in part by the Minister of Revenue.

2. The waiver of interest, penalties or charges differs from the cancellation of such amounts. Waiver occurs where the Minister intervenes before any interest or penalty is assessed. It also occurs where the Minister

waives interest or charges that accrue after a notice of assessment is issued. Where waiver occurs, the Minister elects not to impose the interest, penalties or charges, so those amounts never appear on a notice of assessment or a statement of account.

3. The cancellation of interest, penalties or charges occurs where the Minister intervenes after such amounts are assessed or required to be paid. Any refund that results from such a cancellation bears interest in accordance with section 30 of the TAA or section 1052 of the *Taxation Act* (L.Q., c. I-3; hereinafter the "TA"), as applicable.

#### EXERCISE OF DISCRETION

4. At the Minister's discretion, interest, penalties or charges may be waived or cancelled.

#### Time limit

5. The Minister's discretion to waive or cancel interest, penalties or charges cannot be exercised, in respect of a taxation year or period, unless an application for such a waiver or cancellation is made within the time period set out below.

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<sup>1</sup> 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.

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## *Application in respect of interest*

**6.** Under section 94.1 of the TAA, interest that has accrued in any of the 10 calendar years before the calendar year in which the application is made may be waived or cancelled, regardless of the year in which the debt arose.

## *Application in respect of penalties and charges*

**7.** An application for the waiver or cancellation of penalties and charges in respect of a taxation year or a period must be made on or before the day that is 10 calendar years after the end of said taxation year or period.

## **Principles governing the exercise of discretion**

**8.** The reason for imposing penalties is not to generate additional revenue but rather to encourage compliance with fiscal laws.

**9.** A penalty is imposed where a failure to comply with a fiscal law has occurred, subject to the rules set out in points 16 to 25 below concerning the waiver or cancellation of penalties and the policies regarding the imposition of penalties.

**10.** A debt owing automatically bears interest, subject to the rules set out in points 16 to 25 below.

**11.** A charge is automatically imposed where circumstances exist under which the payment of such an amount can be required.

**12.** The discretion to waive or cancel interest, penalties or charges is exercised by the Minister only under exceptional circumstances. Such discretion may be exercised separately with regard to the interest, penalties or charges. Depending on the circumstances, one or more of those amounts may be waived or cancelled.

**13.** Where it is demonstrated that one of the prescribed circumstances for the waiver or cancellation of interest,

penalties or charges applies in a particular case, only the interest, penalties or charges attributable to that circumstance may be waived or cancelled. Therefore, diligence is required in fulfilling fiscal obligations once the circumstances are such that the person is able to do so. Otherwise, the interest, penalties or charges may be maintained or imposed for part of the period for which the waiver or cancellation is sought.

**14.** Action is taken on an application for the waiver or cancellation of interest, penalties or charges only if the evidence provided by the applicant regarding the situation is considered satisfactory.

**15.** The examples and factors referred to in this bulletin are not exhaustive and must not be construed as limiting the exercise of discretion provided for in section 94.1 of the TAA.

## **Circumstances and criteria for waiver or cancellation**

**16.** The decision to waive or cancel interest, penalties or charges may be made in certain specific circumstances, for example,

(a) in a spirit of fairness, especially in cases where the situation that the person was in prevented the person from fulfilling the person's fiscal obligations on time (see points 18 to 21 below);

(b) in cases where the interest, penalties or charges constitute such a burden for the person that the person is unable to pay the person's fiscal debt (see point 22 below); and

(c) in cases involving certain exceptional administrative situations, where such a decision is often made because of equitable considerations in favour of all taxpayers or mandataries (see points 23 to 25 below).

**17.** It is important to note that where interest, penalties or charges result from an error made by Revenu Québec in applying the law when processing a file, such



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amounts are cancelled because, by law, they cannot be imposed, not because of the exercise of discretion under section 94.1 of the TAA. Furthermore, where the interest or penalty results from an error in applying the law, an objection or appeal is possible, which is not the case where a decision is made under section 94.1 of the TAA.

### **Exceptional situations not caused by the person**

**18.** The waiver or cancellation of interest, penalties or charges may be justified in any of the following situations that may have prevented the person from fulfilling the person's fiscal obligations appropriately or on time:

(a) an exceptional situation beyond the person's control, such as

- a natural disaster, a flood or a fire;
- a serious illness or accident, or a death in the immediate family;
- an interruption of postal service; or
- an error on an RL slip that the person's employer issued to the person, where the latter is neither a person related to the employer nor a director or an officer of the employer, if

— the person could not have noticed the error, acting reasonably, and

— a group of employees to which the person belongs is affected by the error, which is due to a problem with the employer's computer system or a similar problem; or

(b) an action attributable to Revenu Québec, such as

- an error in any document or in any information, whether oral or written, provided by Revenu Québec; or
- an undue delay in processing.

### **Factors to be considered**

**19.** Each case turns on its own facts and the credibility or good faith that may be attributed to the person's explanations.

**20.** The following factors are considered in assessing circumstances that may result in the waiver or cancellation of interest, penalties or charges:

- whether the person has a history of compliance with fiscal obligations;
- whether the person has knowingly allowed an outstanding balance to exist, resulting in the imposition of the interest, penalties or charges;
- whether the person has taken a reasonable amount of care to comply with the law and has not been negligent or careless in conducting the person's affairs; and
- whether the person has acted diligently to remedy any delay or omission.

**21.** In assessing the person's good faith, no single factor among those mentioned above is determinative; they must be considered in their totality.

### **Inability to pay**

**22.** The waiver or cancellation of interest, penalties or charges may be justified where the person is unable to pay. The inability to pay is determined further to a complete financial analysis conducted by the Direction générale du recouvrement in cases where a substantial

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portion of the amounts payable consists of interest, penalties or charges.

In certain special circumstances, the Direction générale du recouvrement may cancel such amounts *ex officio* as part of a tax debt settlement.

## Special circumstances in which waiver or cancellation is possible

### *Fiscal policy or administrative practice*

**23.** Although not provided for above, in a case where Revenu Québec assesses a person in order, for example, to recover an overpayment of a refund, the discretion to waive or cancel interest will be exercised, pursuant to fiscal policy or administrative practice, if Revenu Québec considers that the amount was not refunded or applied on the basis of inaccurate or incomplete information provided by the person.

### *Wash transactions*

**24.** The discretion to waive or cancel a portion of the interest and penalties may be exercised in a wash transaction situation. Such is the case where a registrant supplier did not correctly invoice the tax on a taxable supply, and the recipient of the supply would have been entitled to a full input tax refund in respect of that tax had the recipient paid the tax. A wash transaction may also occur where, within a closely related or associated group of persons, all of whom are engaged exclusively in commercial activities, the wrong entity collects and reports tax or claims an input tax refund. Thus, where justified by the circumstances, any portion of the interest and penalties that is in excess of 4 % of the uncollected Québec sales tax may be waived or cancelled.

### *Carry-back of amounts*

**25.** The discretion to waive or cancel the interest and penalties imposed under sections 1044 and 1045 of the TA may be exercised where the interest and penalties

appear to be unjustified given the circumstances. Such is the case, for example, where a taxpayer compensates for additional income further to a tax audit by carrying back losses from a subsequent year, despite the fact that other deductions, such as capital cost allowance, could have been claimed on the filing-due date for the fiscal return. However, the interest and penalties payable are not waived or cancelled if the only option the taxpayer had to reduce the income tax was to carry back losses.

The position taken by the taxpayer to justify the fact that the taxpayer's income was incorrectly reported must have a reasonable basis, and the factors set out in points 19 to 21 above must be assessed before any interest or penalties are waived or cancelled.

To be considered, an application made pursuant to this point must be filed before the time limit for assessment expires.

## FILING AN APPLICATION

**26.** Any person who wishes to apply for the cancellation of interest, penalties or charges may do so by completing and filing form MR-94.1-V, *Application for the Cancellation or Waiver of Interest, Penalties or Charges*, where the application is made in respect of any Québec fiscal law other than the *Act respecting the Québec sales tax* (L.Q., c. T-0.1), or form FP-4288-V, *Application for the Cancellation or Waiver of GST/HST and QST-Related Interest or Penalties, or of QST-Related Charges*. Any person operating a restaurant establishment who wishes to apply for the cancellation or waiver of a penalty related to the *Sommaire périodique des ventes* (periodic sales summary) may do so by completing and filing form MR-94.1.R-V, *Application for the Cancellation or Waiver of Penalties Related to the Sommaire Périodique des Ventes*.

However, those forms do not have to be used. Such an application can also be made in the form of a letter, provided it contains the following information:



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- the person's name and address;
- as applicable, the person's social insurance number, Québec enterprise number (NEQ) or identification and file numbers;
- the amount of the interest, penalties or charges at issue;
- the taxation year(s) or period(s) concerned;
- the law(s) involved; and
- the grounds upon which the application is based.

Supporting documents must be included with the application.

### **DECISION**

**27.** In accordance with the third paragraph of section 94.1 of the TAA, a decision regarding the exercise of the Minister's discretion to waive or cancel interest, penalties or charges is not subject to an objection or appeal.

### **REVIEW**

**28.** Revenu Québec has established a review mechanism for decisions made pursuant to section 94.1 of the TAA. Any person who believes that such a decision is unfair or unfounded may apply for a review of the decision. The application must be made in writing, either by sending a letter or by completing and filing one of the forms referred to in the first paragraph of point 26 above, and it must state the reasons why the person believes the decision is unfair or unfounded.

### **STATISTICAL SUMMARY**

**29.** Under the fourth paragraph of section 94.1 of the TAA, the Minister is required to table in the National Assembly a statistical summary of the waivers and cancellations, within the same time limit as that provided for in section 76 of the *Act respecting the Agence du revenu du Québec* (L.Q., c. A-7.003; hereinafter the "AARQ") for the tabling of a management report and the financial statements of the Agence du revenu du Québec.

Under section 75 of the AARQ, not later than December 31 of each year, the Agence du revenu du Québec must file its financial statements and a management report with the Minister. According to section 76 of the AARQ, the Minister is required to table those documents in the National Assembly within 30 days of their receipt or, if the Assembly is not sitting, within 30 days of resumption.