



NO.: **IC-92-2**

DATE: March 18, 1992

SUBJECT: **INCOME TAX ACT  
GUIDELINES FOR THE CANCELLATION AND WAIVER OF INTEREST AND PENALTIES**

REFERENCE:

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## Introduction

1. This circular provides information and guidelines to taxpayers and employers regarding certain legislation contained in Bill C-18, enacted December 17, 1991. The legislation gives discretion to cancel or waive all or a portion of any interest or penalties payable, and it applies to taxation years back to 1985.

2. This circular outlines the guidelines that Revenue Canada, Taxation will follow when applying the legislation. It also explains how taxpayers or employers can make a request to cancel or waive interest and penalties for years dating back to 1985, and describes the information required for such requests to be considered.

3. These are only guidelines. They are not intended to be exhaustive, and are not meant to restrict the spirit or intent of the legislation. As the Department gains experience in applying the legislation, these guidelines may be adjusted, as necessary.

## The law

4. The new legislation provides for the cancelling or waiving of all or a portion of any interest or penalties. The appendices to this circular list the more common provisions of the *Income Tax Act* concerning interest and penalties that can be cancelled or waived. This measure took effect on December 17, 1991, and applies to 1985 and subsequent taxation years. The term "normal reassessment period" is relevant in paragraph 13. The "normal reassessment period" is the period that ends three years after the day of mailing of a notice of an original assessment.

## Guidelines and examples of circumstances where cancelling or waiving interest or penalties may be warranted

5. Penalties and interest may be waived or cancelled in whole or in part where they result in circumstances beyond a taxpayer's or employer's control. For example, one of the following extraordinary circumstances may have prevented a taxpayer, a taxpayer's agent, the executor of an estate, or an employer from making a payment when due, or otherwise complying with the *Income Tax Act*:

- (a) natural or human-made disasters such as, flood or fire;
  - (b) civil disturbances or disruptions in services such as, a postal strike;
  - (c) a serious illness or accident; or
  - (d) serious emotional or mental distress such as, death in the immediate family.
6. Cancelling or waiving interest or penalties may also be appropriate if the interest or penalty arose primarily because of actions of the Department, such as:
- (a) processing delays which result in the taxpayer not being informed, within a reasonable time, that an amount was owing;
  - (b) material available to the public contained errors which led taxpayers to file returns or make payments based on incorrect information;
  - (c) a taxpayer or employer receives incorrect advice such as in the case where the Department wrongly advises a taxpayer that no instalment payments will be required for the current year;
  - (d) errors in processing; or
  - (e) delays in providing information such as the case where the taxpayer could not make the appropriate instalment or arrears payments because the necessary information was not available.
7. It may be appropriate, in circumstances where there is an inability to pay amounts owing, to consider waiving or cancelling interest in all or in part to facilitate collection. For example,
- (a) When collection has been suspended due to an inability to pay.
  - (b) When a taxpayer is unable to conclude a reasonable payment arrangement because the interest charges absorb a significant portion of the payments. In such a case, consideration may be given to waiving interest in all or in
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part for the period from when payments commence until the amounts owing are paid provided the agreed payments are made on time.

### **Requests for cancelling or waiving interest and penalties**

8. Taxpayers and employers, or their authorized representatives, can make their requests by writing to the taxation centre where they file their returns, or by sending their requests to the district office serving their area.

9. To support a request, the following information is required:

- (a) the name, address, social insurance number or account number of the taxpayer or employer;
- (b) the taxation years involved;
- (c) the facts and reasons why the interest or penalties levied, or to be levied, were primarily caused by factors beyond the taxpayer's control;
- (d) any relevant documents or correspondence including receipts of payment.

10. The following factors will be considered when determining whether or not the Department will cancel or waive interest or penalties:

- (a) whether or not the taxpayer or employer has a history of compliance with tax obligations;
- (b) whether or not the taxpayer or employer has knowingly allowed a balance to exist upon which arrears interest has accrued;
- (c) whether or not the taxpayer or employer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system;

(d) whether or not the taxpayer or employer has acted quickly to remedy any delay or omission.

### **Unemployment Insurance premiums and Canada Pension Plan contributions**

11. The new measures also apply to interest and penalties provided for in the *Unemployment Insurance Act* and Canada Pension Plan regarding premiums and contributions required to be made.

### **Refund interest**

12. Refund interest will be paid on any reassessment that cancels all or a portion of any interest and penalty previously paid.

### **Objections and appeals**

13. A taxpayer cannot file an objection or appeal where the request to waive or cancel interest or penalties has not or has only been partially granted except for taxation years within the normal reassessment period (see 4 above).

### **Exercise of the discretion**

14. If taxpayers or employers believe that the Department has not exercised its discretion in a fair and reasonable manner, then they may request, in writing, that the director of a district office or taxation centre review the situation.

15. If you have any comments about this circular, please write to:

Revenue Canada Taxation  
Taxation Programs Branch  
875 Heron Road  
Ottawa, Ontario  
K1A 0L8

**Appendix A****Interest which may be  
cancelled or waived*****Income Tax Act reference***

Subsection 161 (1)	Interest on the balance of taxes owing under Part I for a taxation year.
Subsection 161 (2)	Interest on instalments required under Part I.
Subsection 161 (11)	Interest on penalties.
Subsection 227 (8.3)	Interest on amounts not deducted or withheld.
Subsection 227 (9.2)	Interest on amounts deducted or withheld but not remitted.

*Note: This is not a complete list of interest provisions in the Income Tax Act. Other types of interest may be cancelled or waived.*

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**Appendix B****Penalties which may  
be cancelled or waived*****Income Tax Act reference***

Subsection 162 (1)	Penalty for failing to file a return of income.
Subsection 162 (2)	Penalty for repeatedly failing to file a return of income.
Subsection 162 (3)	Penalty for failing to file a return of income as required under subsection 150(3) (e.g., trustees, agents).
Subsection 162 (4)	Penalty for failing to complete an ownership certificate (section 234), or for failing to deliver an ownership certificate as required, or for cashing a coupon or warrant without completing an ownership certificate.
Subsection 162 (7)	Penalty for failing to make an information return or failing to comply with a duty or obligation.
Section 163.1	Penalty for failing to pay all or part of an instalment on the day it is required.
Subsections 227(8) (8.5)	Penalty for failing to deduct or withhold.
Subsections 227(9) (9.5)	Penalty for failing to remit or pay amounts deducted or with-held.

**Note:** *This is not a complete list of penalty provisions in the Income Tax Act. Other penalties may be cancelled or waived.*

