

"the TFSA anomaly"

TAX-FREE SAVINGS ACCOUNTS (TFSA) - OVER-CONTRIBUTIONS

Taxpayers must be careful not to **inadvertently** subject themselves to **TFSA penalties**. For example, if a taxpayer put \$5,000 into Bank 1 in January, 2009 and withdrew that amount and then put \$5,000 into Bank 2 in February, 2009, the penalty is 1% per month (\$50 per month or \$600) because the taxpayer had excess contributions of \$5,000 for the twelve months. This is because the **withdrawal** does **not** get **credited** until the **following year**. If it is considered **deliberate**, there is an additional penalty of **100%** of any income or gains resulting from the deliberate over-contribution.

CRA TFSA PENALTY RELIEF

CRA announced that they will consider **waiving the tax** on **excess TFSA contributions** if the taxpayer **genuinely misunderstood** the operation of the rules. This is because some taxpayers were using the TFSA as a regular bank account and making withdrawals and re-contributions in the same year thereby triggering excess contributions.

CRA sent out over **70,000 letters** to persons who have technically had over-contributions in **2009**. CRA provided taxpayers until **August 3, 2010** to respond to these letters with the intent of having the penalty tax waived. If the taxpayer does not respond with the appropriate information, CRA will issue a **Notice of Assessment** for the 1% per month penalty tax.

If a taxpayer receives a Notice of Assessment, they may **object or request a waiver of the taxes** on excess contribution under **Taxpayer Relief**. (Form [RC4288](#)).

Form [RC4288](#) follows:



REQUEST FOR TAXPAYER RELIEF

Please read the "Information to assist in completing this form" on the last page before completing this form.

Section I – IDENTIFICATION

Taxpayer name		Account number(s) for this request	
		Individual: Social insurance number <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div>	
Mailing address		Employer: <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> RP <div style="border: 1px solid black; width: 40px; height: 20px; margin-left: 10px;"></div>	
		GST/HST Registrant: <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> RT <div style="border: 1px solid black; width: 40px; height: 20px; margin-left: 10px;"></div>	
		Corporation: <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> RC <div style="border: 1px solid black; width: 40px; height: 20px; margin-left: 10px;"></div>	
City	Prov./Terr./State	Other: account number, type of return etc.	
Postal code/Zip code	Country (if other than Canada)		
Telephone:		Home	Work

Section 2 – DETAILS OF REQUEST

1. Type of request:

a) Penalty: cancellation or waiver: *Specify type of penalty and amount, if known* _____

b) Interest: cancellation or waiver: *Specify type of interest and amount, if known* _____

c) Refund or reduction in amounts payable beyond the normal three year period (individual and testamentary trust accounts)

d) Late, amended or revoked election: *Specify type of election* _____

2. Reason(s):

Indicate the reason(s) for your request under the taxpayer relief provisions. Please note no reason is necessary when asking for a refund or reduction in amounts payable beyond the normal three year period.

<input type="checkbox"/> Canada Revenue Agency error	<input type="checkbox"/> Natural or man-made disaster
<input type="checkbox"/> Canada Revenue Agency delay	<input type="checkbox"/> Death/accident/serious illness/emotional or mental distress
<input type="checkbox"/> Financial hardship/inability to pay	<input type="checkbox"/> Civil disturbance
<input type="checkbox"/> Other extraordinary circumstances: <i>Specify</i> _____	

INFORMATION TO ASSIST IN COMPLETING THIS FORM

1. Please use this form for all requests for taxpayer relief (formerly fairness). Complete one form for each taxpayer.
2. For more information, refer to the *Information Circular IC07-1* or the *GST Memorandum G500-3-2-1*, or visit the *CRA Fairness and Taxpayer Rights* web pages, or call 1-800-959-8281(individual enquiries) or 1-800-959-5525 (business/GST enquiries).
3. Complete the form and forward it and all supporting documentation to your tax services office or tax centre. If this is a request for a second review, please address the request to the director of the tax services office or tax centre.
4. If completing this form by hand, please print legibly.

GLOSSARY

- Cancellation of penalty or interest: Cancel an amount already charged in the account.
- Waiver of penalty or interest: Waive an amount that has not yet been charged to the account.
- Normal three year period: The Income Tax Act (ITA) sets a three year limitation period to file an income tax return to claim a tax refund, or to request an adjustment to a previous assessment or determination. However, in the case of an individual (other than a trust) or testamentary trust, the ITA provides the Minister the discretion to refund an overpayment or reduce an amount payable beyond that normal three year period.
- Civil disturbance: An example would be a postal strike.
- Natural or man-made disaster: An example could be a flood or a fire.
- Financial hardship:
 - * For an individual taxpayer, financial hardship refers to financial suffering or lack of what is needed for basic living requirements, such as food, clothing, shelter and reasonable non-essentials.
 - * For a corporate taxpayer, financial hardship refers to where the continuity of business operations and the continued employment of a firm's employees are jeopardized.
- Second review: Request is subsequent to a previous request for taxpayer relief that was denied in part or in full.

SUPPORTING DOCUMENTATION

You must submit all relevant documentation that supports your request for taxpayer relief to ensure that it is reviewed promptly. Depending on the reason for your request, some examples of supporting documentation are as follows:

Cancellation or waiver of penalty and/or interest:

- Doctor's certificate or letter indicating the nature of the illness, duration of treatment (date of onset of the illness and the date or expected date of recovery), hospital dates if applicable, and any explanations regarding the effect that your medical condition may have had on your ability to meet your tax obligations;
- death certificate;
- police/fire report;
- insurance statements;
- details of the error or the delay caused by the Canada Revenue Agency.

Financial hardship cases:

- Full financial disclosure. Supporting documents could include financial statements (an income and expense statement, assets and liabilities statement), current mortgage statement and property assessment, loans and monthly bills, bank statements for three months, current investment statements, copies of credit card statements, etc.

Amended, late, revoked election:

- Completed election form.

Refund or reduction in amount payable beyond the normal three year period:

- Receipts/information slips to support the request for adjustment of your income tax return;
- Completed income tax returns for requesting an assessment beyond the normal three year period.