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Dear Mr. LaFrance:

Re: Requirements to Pay Commonly Asked Questions

Thank you very much for providing us with the opportunity to comment on the draft *Requirement to Pay Questions and Answers*. For easier review, we have used track changes to reflect information that we believe would be helpful to recipients, for example, dealers.

You explained the difficulties that may apply in making certain other changes to the requirement to pay document itself and the technology used to generate requirements to pay. As a fallback measure until the current RTP wording can be replaced with a plain-language alternative, we ask the following:

- Please include on the requirement to pay the URL or other prominent notice of the new *Requirement to Pay Questions and Answers* document. While the form is prescribed, we expect that adding a line with this reference should be straightforward and acceptable.
- Please include the e-mail of the contact person after their name (or if there is a space limit, use the e-mail address which effectively give the contact's first and last names). To preserve privacy, any e-mail exchanges should simply mention the reference number at the top-right corner below the contact's name. E-mail is important so that communications can be documented given the amounts at risk.
- In the case of withdrawals of requirements to pay, please use phone or e-mail rather than mail to avoid hardship for the taxpayer and unnecessary work for the CRA and third party.

Please let us know if we can provide any clarification of our comments. We look forward to seeing the commonly asked questions document finalized and posted on the CRA website.

Yours truly,



Cc: Mark.Olo@cra-arc.gc.ca

Requirement to Pay Questions and Answers

Taxpayer Services and Debt Management Branch / Collections Directorate

Requirements to pay – commonly asked questions and answers

A requirement to pay is one of the methods used by the Canada Revenue Agency (CRA) to collect tax debts when the amounts owing by a taxpayer to the CRA have not been paid voluntarily. Attached is an example of a requirement to pay [Note to CRA: Please attach a sample, highlighting where the term of the RTP is and the location of other items referenced in the Qs&As. Also, please update the form to include the URL of this document.]

What follows are some questions and answers about requirements to pay, with some examples. Although these answers and examples give you some general guidance, the circumstances of when and how a requirement to pay applies depends on the facts of a particular case and therefore can be complicated. If you need more information, or to confirm whether the CRA has withdrawn a requirement to pay, you can call the CRA contact person at the telephone number listed on the upper right hand corner of the requirement to pay.

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In order to fully understand your responsibilities, you are encouraged to get legal advice whenever you are concerned or think it would be needed.

(Note to CRA: Please number questions to allow easier cross-referencing by readers)

1. What is a requirement to pay?

A requirement to pay is a legal notice that the CRA sends when it is believed that a third party owes or will owe money to a taxpayer that has not paid tax debts to the CRA. Some examples of third parties who may receive a requirement to pay are financial institutions, employers, tenants, insurance companies, and individuals or companies that owe amounts to a taxpayer.

A requirement to pay instructs a third party to send money to the Canada Revenue Agency instead of the taxpayer. (The requirement to pay refers to these taxpayers as “tax debtors”.) A requirement to pay shows the taxpayer’s name, address, and CRA account number (for example, an individual’s social insurance number or a company’s GST number) in the top right-hand corner of the first page of the notice, under the contact person’s name and phone number.

Requirements to pay apply to many different types of payments a third party makes to a taxpayer. Some of these types of payments include:

- salary or wages of an employee;
- contract and subcontract payments;
- commissions of an employee, contractor, or subcontractor;

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- bonus payments;
- rent payments;
- fees or other amounts owing to a professional (for example a lawyer);
- loans or advances (a new loan or a draw against a line of credit);
- advances on salaries, wages, or other payments;
- annuity payments;
- interest payments;
- dividend payments;
- proceeds of an insurance claim;
- proceeds from the sale of an asset;
- proceeds of investments that are disposed of (see question 18 for more details);
and
- amounts on deposit (cash) in a bank or other account. **(Note to CRA: What about in a registered plan?)**

2. The requirement to pay tells me to pay all “moneys” to the Canada Revenue Agency. What are moneys?

“Moneys” means all forms of currency, coins, negotiable cheques, or funds on deposit, having value and used to exchange for property or the payment of debts. Financial assets, like bonds or shares of company or other securities, are **not** considered moneys by the CRA. However, bonds, shares or other investments will have to be remitted to the CRA under the requirement to pay if the tax debtor asks for them to be converted into currency or funds on deposit or, for example, if a term deposit matures and the cash balance is returned to the account. (Note: What about foreign currency: does this have to be converted into Canadian cash which can expose the client to a loss on the exchange rate?)

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3. What authority does the Canada Revenue Agency have to send out requirements to pay?

The CRA sends out requirements to pay to third parties based on the legislation it administers and enforces.

In most cases, the CRA relies on section 224 of the *Income Tax Act* or section 317 of the *Excise Tax Act*. Both of these sections talk about the CRA’s authorities under the heading of “Garnishment”. These sections contain different rules that apply to a third party in different situations.

The CRA can send out requirements to pay without a court order.

A third party who receives a requirement to pay should call the contact person listed in the top right-hand corner of the first page of the requirement to pay if the third party has questions or concerns about what he or she has to do or how to respond.

4. I received a requirement to pay. When is my payment due?

You must pay the CRA all the amounts that are “due to be paid”, in the sense explained in more detail below, to the taxpayer when you receive the requirement to pay (Note to CRA: As “due” can both mean “owed as a debt” and have a time element as in payable on a certain date or on demand, it is important to define clearly what “due to be paid” means in the sense of the CRA’s Administration of the Income Tax Act).

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If the entire amount that you owe the taxpayer is not due to be paid at the time that you receive the requirement to pay, you must pay the CRA any amounts due in the future at the time they are due to the tax debtor. Your obligations stop when you no longer have amounts that are due to be paid to the taxpayer, or the total of the amounts you have sent to the CRA equal the maximum amount shown on the requirement to pay or the CRA advises that the requirement to pay has been withdrawn (see the answer to question 9 below).

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If you owe money to a taxpayer but do not have to pay him or her until a later date, you do not have to pay the CRA until the date the payment is due to the taxpayer. For example, you owe your landlord \$12,000 for rent over the course of a year, but you are only required to pay your landlord \$1,000 each month. If you receive a requirement to pay instructing you to pay the amounts that you pay to your landlord directly to the CRA, you would be required to pay the CRA once a month, when the rent payment becomes due. Your payment is due to the CRA at the same time it is due to your landlord.

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If you are holding some of a taxpayer’s money and that taxpayer is allowed to ask you to pay the money to him or her at any time, you must send those amounts to the CRA right away. However, if you are holding the taxpayer’s money in an account or investment that cannot be cashed out until a specific date, you are not required to pay the CRA until that date.



Keep a copy of the requirement to pay until it expires or is fulfilled or you have received written notice from the CRA that the requirement to pay has been revoked. Although you may not owe any amounts to the taxpayer when you receive the requirement to pay, you may owe amounts and be required to pay amounts to the taxpayer in the future while the requirement to pay is still valid. If this is the case, **you must still comply with the requirement to pay, even if you did not expect to owe money to the taxpayer in the future and you have already told CRA you did not have to make a payment to the taxpayer when you received the notice.**

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5. How long is the requirement to pay in effect? How do I know if it's paid in full?

Some requirements to pay are valid for one year, and some are valid for 90 days. Others continue to be valid until the taxpayer's debt is paid in full (which can be longer than a year), or you have sent the CRA the maximum amount on the requirement to pay. To find out the length of time the requirement to pay is valid for, look on the first page of the notice (Note to CRA: In the RTP seen, there was no immediately obvious field showing "Valid for/until..."; it appeared to say only "forthwith". Please attach an example or provide additional clarification.

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Also, the following excerpts from an RTP imply that there may not be an expiry

This Requirement to Pay has a continuing effect with respect to the payments described in (3), until the maximum payable is paid in full.

(3) where the moneys referred to in (1) and (2) include interest, rent, remuneration, a dividend, an annuity or other periodic payment, all such payments to be made by you to the tax debtor at any time during or after the one year period until the liability is satisfied;

Also, the following paragraph is confusing as it seems contradictory to remit for the requirement to pay as soon as there is money available.)

This Requirement to Pay should not be returned prior to one year from the date it was issued.

To find out if it has been paid in full, or if the requirement to pay has been withdrawn/revoked/rescinded, or if you have any other questions regarding this, you can call the CRA contact person at the telephone number listed on the upper right hand corner of the requirement to pay.

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You should keep a record of the amount and date of all the payments you make after receiving the requirement to pay. (Note to CRA: Should these tax records be kept for seven years as with other tax documentation?)

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6. How much of the amounts due to the tax debtor do I have to remit to the CRA? How do I calculate it?

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The maximum amount you have to pay is shown on the first page of the requirement to pay, in bold. (Note to CRA: From the foregoing, this and other questions, it appears possible that the commonly asked questions are directed more towards employers. If this is case, please break this question into two parts. For example, third parties that are financial institutions holding client assets are presumably asked to send the full amount due up to the amount shown, rather than a rate). The requirement to pay also tells you at what rate you have to pay. The rate can be stated as a percentage or a fixed amount. This rate applies to **every payment**. If the requirement to pay does not show a rate, you must pay the CRA the full amount you owe the taxpayer that is due to be paid to the tax debtor when you receive the requirement to pay (see question 3 for an explanation of “due to be paid”).

This chart shows how to calculate the amount to pay the CRA, from the information shown on the requirement to pay. You must calculate the amount you have to pay the CRA every time you are going to make a payment.

| Maximum payable on the requirement to pay | Amount you owe and have to pay to the taxpayer today | Rate on requirement to pay | Pay to the Canada Revenue Agency today | Amount remaining to be paid to the Canada Revenue Agency on future payments |
|---|--|----------------------------|--|---|
| \$6,000 | \$1,000 | 20% | \$200 | \$5,800 |
| \$5,000 | \$7,000 | 30% | \$2,100 | \$2,900 |

| | | | | |
|---------|---------|-----------------------|---------|-------------|
| \$8,000 | \$2,500 | \$400 fixed amount | \$400 | -\$2,100 * |
| \$4,000 | \$3,000 | not indicated | \$3,000 | -\$1,000 ** |
| \$2,000 | \$3,000 | not indicated | \$2,000 | -\$0 ** |

*** Note to CRA: the \$2,100 may be misleading as presumably \$5,500 also has to be paid at a future time; clarify?**

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If you are an employer and the rate on the requirement to pay indicates a percentage, use the taxpayer's **net salary or wages** every payday to calculate the amount that must be sent to the CRA.

To calculate your employee's **net salary or net wage**, do the following:

Total salary or wage in pay period

Minus:

Federal income tax
 Provincial income tax
 Canada Pension Plan/Quebec Pension Plan
 Employment insurance premiums
Employer Health Tax or other provincial payroll taxes.

Equals: Net salary or net wage

If you have questions about how much you have to pay or how to calculate the amount of your payment, or both, please call the contact person listed in the top right-hand corner of the first page of the requirement to pay.

7. How do I pay?

There are two ways you can make your payment:

1. Make the payment at your financial institution. Bring the remittance form you received with the requirement to pay with you to your financial institution. Get a receipt for your payment from the financial institution for your records.

(Note to CRA: Please clarify the foregoing as the one RTP seen said the following)

The payment of this remittance CANNOT be made at a financial institution and must be forwarded to a Canada Revenue Agency office.

2. Make your cheque or money order payable to the Receiver General. Then, mail your cheque or money order and remittance form to the CRA with one of the remittance forms you received with the requirement to pay. The mailing address we want you to use is on the back of the remittance forms. Write the account number given on the remittance form on the front of your cheque or money order to make sure the payment is made correctly.

If you need more remittance forms **(Note to CRA: Can the third party download or copy a version?)**, please call the contact person listed in the top right-hand corner of the first page of the requirement to pay.

8. Can the Canada Revenue Agency withdraw a requirement to pay?

Yes, the CRA can withdraw a requirement to pay in certain circumstances. You will be advised in writing if the CRA withdraws the requirement to pay.

The withdrawal of the requirement to pay is effective the date the CRA sends you a withdrawal letter. If you owe a taxpayer amounts before the date on the withdrawal letter, you are still required to send the CRA those amounts, up to the maximum amount. **As there can be delays in the mail, you can also call the contact person listed in the top right-hand corner of the first page of the requirement to pay or, if you cannot reach that person, call 1-888-863-8657.**

9. What happens if I have already sent a payment when I receive the withdrawal of the requirement to pay?

(Note to CRA: Please answer)

10. I received a requirement to pay but do not have a client of the name listed. What do I do?

(Note to CRA: Call the contact person listed in the top right-hand corner of the first page of the requirement to pay?)

11. I don't owe the taxpayer any money. The taxpayer is no longer one of my employees, or I no longer have business dealings with the taxpayer, or both. What should I do?

Please tick the appropriate box on page two of the requirement to pay form **(Note to CRA: Please include an example of the reverse of the form)**, and answer the questions under this box so the CRA knows why you do not owe the taxpayer money. Once you have filled out the form, please mail it **or call the contact on the top right-hand corner of the requirement to pay to obtain a fax number** to **more quickly and effectively notify** the CRA.

Always keep a copy of the requirement to pay. If you do **not** owe money to the taxpayer right now, you might owe and be required to pay money to the taxpayer in the future. If the requirement to pay is still in effect at that future date **and it has not been withdrawn**, you must send the CRA money as payments become due to be paid to the taxpayer.

You can call the contact person listed in the top right-hand corner of the first page of the requirement to pay if **you have any questions**. **(Note to CRA: Would where to send be on or with the form the third party completed in paragraph 1)**

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12. I received a requirement to pay for a taxpayer who was one of my employees, but who recently quit. What do I have to withhold from his or her final pay?

That will depend on what the requirement to pay instructs you to do. Read the instructions on the first page of the requirement to pay, in the paragraph starting with **"but do not pay hereunder..."** The end of this paragraph tells you what part of the taxpayer's termination pay you must pay to the CRA.

If you are unsure, call the contact person listed in the top right-hand corner of the first page of the requirement to pay for instructions.

13. Do I need to tell the taxpayer that I received the requirement to pay?

The CRA sends the taxpayer a copy of the requirement to pay directly. You can tell the taxpayer that you received the requirement to pay if you want to or provide a copy of it if the taxpayer requests, although neither of these steps is a requirement.

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14. The taxpayer said that he or she has made arrangements with you and I don't have to send you any money. What should I do?

Call the contact person listed in the top right hand corner of the first page of the requirement to pay as it is possible that the requirement to pay has been withdrawn (see question 9). You should comply with the requirement to pay you receive unless the CRA informs you in writing that the requirement to pay has been withdrawn or changed in any way.

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If you are unsure, call the contact person listed in the top right hand corner of the first page of the requirement to pay.

15. What happens if I do not comply with the requirement to pay?

Comply with the requirement to pay you receive. **(Note to CRA: Please clarify what should be done if the third party has also received a requirement to pay or equivalent from Revenu Québec, other Crown corporation/government body or equivalent court-ordered payment requirement.)**

A requirement to pay is a legal notice, so if you do not respect it, the CRA can take legal action against you personally.

The CRA will consider you to be non-compliant with the requirement to pay, and may take legal action against you if you:

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- refuse to pay the CRA when you owe money to a taxpayer and are required to pay that taxpayer;
- continue to pay the taxpayer amounts you are legally required to pay to the CRA;
- pay someone else, such as a relative of the taxpayer or another one of the taxpayer's creditors, for the taxpayer instead of the CRA; or
- refuse to pay the taxpayer or us.

The CRA can hold you responsible to pay the part of the taxpayer's debt that you should have paid to the CRA but did not.

If you have any questions, please call the contact person listed in the top right-hand corner of the first page of the requirement to pay.

16. What if I make a mistake and overpay or underpay the requirement to pay?

If you miscalculated your payments, call the contact person listed in the top right-hand corner of the first page of the requirement to pay. His or her response will depend on the situation. **(Note to CRA: If there is an overpayment, will the CRA repay directly to taxpayer or will send overpayment amount back to financial institution?)**

17. Can a requirement to pay apply to a house, a car, jewellery, or other non-liquid assets? Do they have to be sold to pay the requirement?

Requirements to pay apply to money that is either due to the taxpayer or that can be requested by a taxpayer, or become due or can be requested in the future, while the requirement to pay is valid.

You do **not** have to sell assets like houses, cars, and jewellery to comply with a requirement to pay. However, the requirement to pay would apply if the assets are sold and converted into cash while the requirement to pay is in effect.

For example, normally a requirement to pay does **not** apply to a taxpayer's house. However, if the sale of the house happens while the requirement to pay is valid, then the requirement to pay applies to the proceeds of sale that remain after valid mortgages registered against the property have been paid.

If you have questions about whether a requirement to pay applies to certain assets, call the contact person listed in the top right-hand corner of the first page of the requirement to pay. He or she will provide you with instructions based on or your situation.

18. What effect does a requirement to pay have on investments?

It depends on the type of investment, as well as on the terms of the requirement to pay. If you hold a taxpayer's investment and receive a requirement to pay, your obligations

depend on the type of investment you hold, the actions of the taxpayer, according to which legal authorities the requirement to pay was issued, and the terms of the requirement to pay.

If you are holding some of a taxpayer's money and that taxpayer is allowed to ask you to pay the money to him or her at any time (for example, money on deposit in a bank account), you must send those amounts to the CRA right away. However, if you are holding the taxpayer's money in an account or investment that cannot be cashed out until a specific date, you are not required to pay the CRA until that date.

If the investment is money on deposit for a fixed term (for example, a guaranteed investment certificate (GIC)), the money should be sent to the CRA at the end of the fixed term, if the GIC matures during the period the requirement to pay is valid. If the taxpayer is allowed to ask the money to be paid to him or her before the GIC matures, then the requirement to pay would apply when it is received and you must send the money to the CRA right away. The CRA will consider you to have not complied with a requirement to pay if you;

- 1) reinvest the money into a new investment rather than sending it to the CRA as the taxpayer could have requested payment; or
- 2) pay the proceeds of the investment to the taxpayer while the requirement to pay is valid.

If the investment includes stocks and bonds with no fixed term, you are **not** required to collapse the investments in the account to comply with the requirement to pay. You are required to send the CRA any moneys that are on deposit in the cash portion of the account at the time you receive the requirement to pay. You are also required to send the CRA any moneys that are deposited into the cash account in the future while the requirement to pay is valid. If the taxpayer instructs you to sell some or all of the investments to reinvest or purchase new investments while the requirement to pay is valid, you must send the sale proceeds to the CRA. Also, you are required to send the CRA the proceeds of sale if the shares are sold whether or not the sale resulted from instructions you received from the taxpayer.

If the taxpayer's investment account is a margin account, call the contact person listed in the top right-hand corner of the first page of the requirement to pay. He or she may be able to give you special instructions for your situation, or they may recommend that you consult with your legal representative if the situation is too complex. If you have other questions such as what you should do in a certain situation; what authorities the requirement to pay have been based on; or how long the requirement to pay is valid, call the contact person listed in the top right-hand corner of the first page of the notice.

19. What do I do if the client asks for physical securities?

(Note to CRA: Please provide an answer.)

20. What do I do if the client asks to transfer securities?

(Note to CRA: Please provide an answer.)

21. What if the asset cannot be garnisheed (e.g., insurance)?

(Note to CRA: Please provide an answer.)

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22. The taxpayer's investments are in a registered plan. I think that these enjoy creditor protection. Does the CRA have a priority in this case?

(Note to CRA: Please provide an answer.)

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23. I pay the taxpayer once in a while. Do I have to pay you all at once?

Please send the CRA the amounts that you owe the taxpayer when they become due. If you have questions, please call the contact person listed in the top right-hand corner of the first page of the requirement to pay.

24. I am already sending some of the money I am required to pay the taxpayer to another creditor. What should I do?

You should honour the CRA's requirement to pay.

If there are not enough funds to pay the other creditor and the CRA, call the contact person listed in the top right-hand corner of the first page of the requirement to pay. He or she will review the specific case and respond.

25. The taxpayer's name does not match the social insurance number I have on file. What should I do?

Call the contact person listed in the top right-hand corner of the first page of the requirement to pay right away. He or she may be able to give you more information to help make sure the requirement to pay you received is accurate.

26. Do I still owe money to the CRA if the taxpayer goes bankrupt?

In some situations, yes you do still owe money to the CRA. However, it depends on the legislation the requirement to pay is based on. Call the contact person listed in the top right-hand corner of the first page of the requirement to pay for instructions.

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27. Does the CRA pay for the costs, such as for legal advice, which I incur to comply with the requirement to pay?

(Note to CRA: Please provide an answer.)

28. I understand that I can charge the tax debtor a reasonable amount for costs I incur associated with the requirement to pay, such as couriered payments. Can you confirm this?

(Note to CRA: Please provide an answer.)

29. Who do I contact if I need more information or have questions?

Call the contact person listed in the top right-hand corner of the first page of the requirement to pay. If you are unclear about an answer you receive or cannot reach that person, call 1-888-863-8657. **(Note: A number of members report receiving different answers from CRA staff; we assume that CRA has extensive training programs but given the risk third parties face, we have been asked to suggest that RTP collectors direct rarer questions to or confirm their answers with their managers).**