

# Crown's Right of Recovery Act

## Information Circular MV-1R6

### Administration of the Health Cost Recovery Program

Last updated: June 13, 2023

## Important Information

This information circular is intended to explain legislation and provide specific information. Every effort has been made to ensure the contents are accurate. However, if a discrepancy should occur in interpretation between this information circular and governing legislation, the legislation takes precedence.

## Contents

- [Overview](#)
- [Registration Requirements](#)
- [Estimate of Crown Costs](#)
- [Estimate of the Amount Owning by Automobile Insurers](#)
- [Filing and Remittance Requirements](#)
- [Example](#)
- [Penalties and Interest](#)
- [Waiver or Cancellation of Penalties or Interest](#)
  - [Basis of Waiver](#)
  - [Application Process](#)
  - [Dispute Options](#)
- [Request for a Review of Amount Owning](#)
- [Audit of Automobile Insurer's Records](#)
- [Voluntary Disclosure Program](#)

## Overview

1. The Health Cost Recovery Program is legislated under the *Crown's Right of Recovery Act* (the Act) governed by Alberta Health, and the Crown's Right of Recovery (President of Treasury Board and Minister of Finance) Regulation, which is administered by Alberta Treasury Board and Finance, Tax and Revenue Administration (TRA).
2. The Act includes a provision to recover from automobile insurers the Crown's cost of health services provided to victims of automobile accidents. For each calendar year, automobile insurers must report and remit to TRA an amount representing their proportionate share of the total estimated Crown cost of health services related to automobile accidents.
3. An 'automobile insurer' is defined in the Act to mean an insurer under a motor vehicle liability policy, which includes third party liability insurance against liability resulting from bodily injury to or death of one or more persons and loss of or damage to property.

[Back to Contents](#)

## Registration Requirements

4. Automobile insurers do not have to register directly with TRA. The Alberta Superintendent of Insurance provides TRA with an annual listing of licensed automobile insurers. Using this list, TRA registers new automobile insurers, and de-registers automobile insurers no longer licensed in Alberta.

[Back to Contents](#)

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## Estimate of Crown Costs

5. For each calendar year (assessment factor year), the Minister of Health determines an 'aggregate assessment' to be paid by automobile insurers. The aggregate assessment is based on information prepared by Alberta Health, actuarial reports, and consultations with representatives from the automobile insurance industry.
6. A proposed aggregate assessment is calculated and notice of this proposal is sent to each automobile insurer licensed to provide automobile insurance under the *Insurance Act*. An automobile insurer has the right to make representations concerning the proposed aggregate assessment. Representations can be sent to the Insurance Bureau of Canada.
7. After representations are considered, a report is submitted to the Minister of Health, who reviews the document and establishes the final aggregate assessment for the assessment factor year. All automobile insurers are notified of the amount.
8. Alberta Health also notifies TRA of the amount of the aggregate assessment so that TRA can establish the 'assessment factor' for the assessment factor year.

[Back to Contents](#)

## Estimate of Amount Owning by Automobile Insurers

9. Once the aggregate assessment has been established, TRA establishes the assessment factor, which is determined by the formula:

$A / B$

where

A is the aggregate assessment determined by the Minister of Health for the assessment factor year plus the aggregate assessment for the 2<sup>nd</sup> calendar year preceding the assessment factor year less the amount collected by TRA for the 2<sup>nd</sup> calendar year preceding the assessment factor year.

B is the projected total premiums for the assessment factor year, which is determined by the formula:

$2 [C(1-D)] + E$

where

C is the average of the changes in total premiums written between

- (i) the 2<sup>nd</sup> and 3<sup>rd</sup> calendar years preceding the assessment factor year,
- (ii) the 3<sup>rd</sup> and 4<sup>th</sup> calendar years preceding the assessment factor year, and
- (iii) the 4<sup>th</sup> and 5<sup>th</sup> calendar years preceding the assessment factor year.

D is the adjustment factor established by TRA for the assessment factor year.

E is the total premiums written for the 2<sup>nd</sup> calendar year preceding the assessment factor year.

The assessment factor is rounded off to four decimal places and then converted to a percentage.

10. Once the assessment factor is established by TRA for the assessment factor year, it is published in a Special Notice on the [Health Cost Recovery page](#) of the Government of Alberta. Automobile insurers use the assessment factor to determine the amount of Health Cost Recovery that must be remitted to TRA.

[Back to Contents](#)

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## Filing and Remittance Requirements

11. Automobile insurers must file a report of the premiums for third party liability insurance written in the calendar year. Third party liability insurance premiums placed by automobile insurers with the Risk Sharing Pool (RSP) are not taxable at the time they are ceded to the RSP. The RSP allocates to each automobile insurer its proportion of the total premiums received each month by the RSP. Automobile insurers must include the third party liability insurance premiums allocated each month from the RSP on the [Health Cost Recovery Report – Automobile Accidents](#).
12. The Health Cost Recovery Report may be submitted to TRA electronically through the Tax and Revenue Administration Client Self-Service (TRACS) system. **The report must be received by TRA on or before March 15<sup>th</sup> of the year following the particular calendar year, together with the automobile insurer's remittance.** For more information on how to file the report, refer to the [Health Cost Recovery](#) page of the Government of Alberta website. For information on how to access TRACS, see the [TRACS](#) page of the website.
13. A company that is licensed under the *Insurance Act* to provide insurance but does not write third party liability insurance in Alberta during a calendar year is not required to file a Health Cost Recovery Report for a calendar year. If a company does not provide insurance in Alberta during a calendar year, it should notify TRA of this.
14. For information on how to remit Health Cost Recovery to TRA, refer to the ['Making payments to Tax and Revenue Administration'](#) page of the Government of Alberta website.

### Example

15. Company A is an automobile insurance company licensed to provide automobile insurance for all, or part, of the 2019 calendar year. During the 2019 calendar year, Company A has written \$1,000,000 of total premiums for third party liability insurance. The assessment factor for the 2019 calendar year, as published on the Government of Alberta website, is 6.70%.

Company A completes the Health Cost Recovery Report on TRACS and ensures that the report and remittance are received by TRA on or before March 15, 2020. The remittance of \$67,000 is calculated as follows:

$$\begin{aligned} \text{Remittance} &= \$1,000,000 \times 6.70\% \\ &= \$67,000 \end{aligned}$$

[Back to Contents](#)

## Penalties and Interest

16. If the Health Cost Recovery Report and the automobile insurer's required remittance of the Health Cost Recovery is not received by TRA on or before March 15<sup>th</sup> of the year following the assessment factor year, the automobile insurer may be assessed a late-filing penalty, and will be assessed interest.
17. The late-filing penalty charged for failing to file the Health Cost Recovery Report on time is the greater of:
  - \$25 per day for each day the Health Cost Recovery Report is late, or
  - the total of:
    - five per cent of the unpaid Health Cost Recovery on the required filing date of March 15<sup>th</sup>, and
    - one per cent of the unpaid Health Cost Recovery on the 15<sup>th</sup> day of each subsequent month in which the report remains unfiled.
18. Interest on late remittances of the Health Cost Recovery and penalties charged for late-filed Health Cost Recovery Reports is compounded daily. The rate used each quarter is the sum of:
  - a reference rate (the average interest rate, rounded up, on 90-day treasury bills during the first month of the preceding calendar quarter), and
  - 3.5%.

Current interest rates are provided on the Government of Alberta [website](#).

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19. Interest on late remittances of the Health Cost Recovery or on the late-filing penalty assessed for failing to file the Health Cost Recovery Report on time begins to accrue starting on the first business day after the date the remittance or report was due (March 15<sup>th</sup> of the year following the assessment factor year).

[Back to Contents](#)

## Waiver or Cancellation of Penalties or Interest

### Basis of Waiver

20. TRA recognizes there may be circumstances beyond a person's control that prevent the person from complying with the Act. In such circumstances, TRA may consider it appropriate to exercise its discretion in the application of penalties or interest, or TRA may exercise its discretion to waive or cancel all or any portion of penalties or interest that have been assessed under the Act. A waiver or cancellation of penalties or interest is intended to provide relief in circumstances not covered by the Act or administrative policy and should be used as a last resort. In considering a request for a waiver of penalties or interest, TRA generally considers extraordinary circumstances, administrative delay or error, or financial hardship. However, these circumstances are merely guidelines and TRA will consider all the relevant facts of a particular case when determining whether a waiver should be granted. In general, penalties that relate to false statements made knowingly or through negligence, carelessness, or wilful default will not be waived.

### Extraordinary Circumstances

21. TRA may waive penalties or interest if extraordinary circumstances prevented an automobile insurer or its representative from complying with the Act, for example,
- natural disasters, such as floods or fires,
  - personal tragedies, such as a serious illness, accident, or death of the person (or in the family of the person) that oversees and ensures compliance with the Act,
  - civil disturbances or disruptions in services, and
  - public health emergencies.
22. In all cases, TRA must be satisfied that, despite the extraordinary circumstances, the automobile insurer made all reasonable efforts to comply with the Act. Doing so includes filing Health Cost Recovery Reports and remitting the Health Cost Recovery on time. If an automobile insurer fails to file a Health Cost Recovery Report or remit Health Cost Recovery by the due date, and the extraordinary circumstances leading to the request for a waiver of penalties or interest did not occur until after the due date, TRA may not waive the penalties or interest.

### Administrative Delay or Error

23. TRA may waive penalties or interest if the person requesting the waiver can establish that TRA's actions were in error or were the primary cause of the delay, for example,
- processing delays by TRA that result in an automobile insurer not being informed within a reasonable time of an amount owing,
  - unreasonable delays in resolving a review of an amount owing or in completing an audit,
  - incorrect advice or action in response to an automobile insurer's enquiry or request,
  - errors in information provided by TRA in publications or forms, and
  - new interpretations of tax law by TRA after a return was filed in reliance on a previous interpretation.

### Financial Hardship

24. TRA will consider waiving interest when substantial interest has accumulated or is expected to accumulate for an automobile insurer confirmed to be unable to pay all amounts owing.
25. TRA will consider waiving interest accumulated over the course of an extended payment agreement that was based on the automobile insurer's inability to pay. The waiver will apply only if the automobile insurer maintains its payment schedule and complies with the Act.
26. Normally penalties will not be waived based on financial hardship unless it is determined that enforcing payment of the penalties would jeopardize the continued operation of an automobile insurer's business, the jobs of its employees, or the welfare of the community.

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27. Prior to approving an application for a waiver of penalties or interest based on financial hardship, TRA requires full financial disclosure from the applicant, including a statement of income and expenses, and assets and liabilities.

### Exclusions

29. The Health Cost Recovery Program operates on a self-assessing system that depends on voluntary compliance. Automobile insurers are responsible for correctly calculating, reporting, and remitting Health Cost Recovery as and when required by the Act. Interest or penalties may be assessed when TRA detects and corrects errors in filed returns. This may not occur until a post-assessment review of the return is made, which could be several months or years after the initial assessment. In these cases, the assessed penalties or interest may not be waived on account of the delay unless the delay was considered unreasonable.
30. Normally penalties or interest will not be waived for errors or delays caused by the automobile insurer or its representatives on account of lack of knowledge, misrepresentation or misapplication of the provisions of the Act.
31. A postal strike is not normally sufficient reason for TRA to waive interest on a late payment because payments can be made electronically. For information on how to remit Health Cost Recovery to TRA, refer to the ['Making payments to Tax and Revenue Administration'](#) page of the Government of Alberta website.

### Other Considerations

32. Before an application for a waiver of penalties or interest is approved, TRA considers how the applicant has conducted business with TRA, including the automobile insurer's history of compliance with the Act, efforts made to prevent the liability or take corrective action, and the amount of care taken in conducting its affairs under the self-assessing system.

[Back to Contents](#)

### Application Process

33. To request for a waiver of penalties or interest, an automobile insurer should complete the [Request for a Waiver of Penalties and Interest \(Form AT4764\)](#). The request should include reasons why the penalties or interest should be waived, supported by a chronology of events (as applicable), as well as a description of all previous contacts with TRA or other areas of Alberta Treasury Board and Finance on the matter, if any.
34. The completed form or a written request may be emailed to [tra.revenue@gov.ab.ca](mailto:tra.revenue@gov.ab.ca) to the attention of the Tax Services Branch, or it may be mailed to

ALBERTA TREASURY BOARD AND FINANCE  
TAX AND REVENUE ADMINISTRATION  
TAX SERVICES BRANCH  
9811 109 STREET NW  
EDMONTON AB T5K 2L5

35. An application for a waiver of penalties or interest must be submitted to TRA within four years from the end of the calendar year in which the penalty or interest was assessed.
36. Before an application for a waiver of penalties or interest is approved, TRA may contact the applicant and ask for additional information or documentation to be provided. TRA will review the application in detail and consider all relevant factors. The applicant will be informed of the decision in writing.
37. Any resulting changes to penalties or interest will be made through an adjustment to the automobile insurer's account, or through reassessment. Interest will not be paid on refunded amounts.

[Back to Contents](#)

### Dispute Options

#### Second Administrative Review

38. If an application for a waiver of penalties or interest is partially approved or denied and the applicant believes that TRA's discretion was not properly exercised, the person may request that TRA reconsider the original decision. During the second review, the applicant will have the opportunity to make additional representations to TRA for consideration.

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39. A written request for a second administrative review may be sent to TRA by email or regular mail at the addresses set out in the '[Application Process](#)' section.
40. Tax Services Branch staff not involved in the review of the first application for a waiver of penalties or interest will perform the second administrative review to ensure impartiality.
41. The applicant will be informed of the second decision in writing.

[Back to Contents](#)

### Judicial Review

42. If the automobile insurer disagrees with either of TRA's decisions in respect of a waiver of penalties or interest, an application for judicial review may be filed with the Court of King's Bench. The automobile insurer should obtain professional advice or contact the Court for information on how and when to make an application for judicial review.

[Back to Contents](#)

### Request for a Review of Amount Owing

44. TRA may establish an amount that an automobile insurer is required to pay using an estimate of premiums for third party liability insurance written by the automobile insurer and any penalties and interest accrued. This would occur where the automobile insurer has not submitted the Health Cost Recovery Report or has not provided information requested by TRA. A notice is sent to the automobile insurer indicating the amount owing and how it was calculated.
45. An automobile insurer that receives a notice of an amount owing may, within 30 days of the date on the notice, request a review of the estimated premiums for third party liability insurance used to calculate the amount owing. The request must be in writing and include a statement of reasons.
43. A request for a review may be emailed to [tra.revenue@gov.ab.ca](mailto:tra.revenue@gov.ab.ca) to the attention of the Tax Services Branch, or it may be mailed to

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46. On receipt of a request for a review, the Executive Director of the Tax Services Branch will review the facts of the case and will either confirm or vary the amount the automobile insurer is required to pay. The automobile insurer will be notified of the decision in writing.
47. Interest will accrue on any unpaid amount determined by the review from the time the amount should have been paid (March 15<sup>th</sup> of the year following the assessment factor year).
48. If the review results in a reduction of the amount to be paid by the automobile insurer and the original amount had been paid in full prior to the review, interest will be paid on the difference at the respective prescribed credit interest rate provided on the Government of Alberta [website](#). However, if the automobile insurer has outstanding remittances from other years due to the Crown, the difference will be used to offset that liability.

[Back to Contents](#)

### Audit of Automobile Insurer's Records

50. TRA auditors are authorized to conduct audits of an automobile insurer's records to determine whether or not the amount remitted was calculated correctly.
51. An auditor may:
- enter an automobile insurer's business premises where relevant books and records are kept,
  - inspect, audit and examine all books, records and other documentation of the automobile insurer pertinent to the determination of the remittance for a calendar year, and

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- make copies of the books, records and other documentation of the insurer, as required.
52. An auditor has the right to receive assistance from the officer, employees and agents of the automobile insurer in conducting the audit.
  53. If errors or omissions are found during an audit, TRA will notify the automobile insurer of any additional amounts to be remitted.

### Voluntary Disclosure Program

54. TRA encourages self-assessment of Health Cost Recovery and welcomes submissions that show intent to voluntarily correct previous contraventions of the Act. Through the Voluntary Disclosure Program (VDP), an automobile insurer may apply to correct inaccurate or incomplete information, or disclose information not previously reported, including wilful circumventions of the Act. Examples of situations where the VDP may apply to an automobile insurer include failing to file a Health Cost Recovery Report as and when required or filing a Health Cost Recovery Report but subsequently discovering that premiums were under-reported and in need of correction.
55. In accordance with the terms of the VDP and further to the discretionary authority provided under the Act, TRA is empowered to grant relief from penalties or interest. However, the VDP is not intended to limit the discretionary authority of TRA to waive penalties or interest in other circumstances, such as those explained in the ['Waiver or Cancellation of Penalties or Interest'](#) section.
56. The VDP for the Health Cost Recovery Program is administered by the Corporate Audit Branch of TRA using the same guidelines and processes established for voluntary disclosures under the Corporate Income Tax Program, as applicable. For additional information on the VDP, refer to [Information Circular CT-3, Corporate Income Tax Assessments, Audits and Dispute Resolution](#).

[Back to Contents](#)