

## Consumer Taxes

TVQ. 1-5                      **The Québec Sales Tax and the Services Performed by a Bailiff**  
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Reference(s):                *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 1 and 16

This bulletin states how the *Act respecting the Québec sales tax* (the “Act”) applies to bailiff’s fees in relation to the service and execution of a writ of seizure.

### GENERAL CONSIDERATIONS

1. The services of a bailiff may be required by a creditor to execute a judgment condemning a debtor to pay a sum of money. This is effected by means of a writ of seizure enjoining the bailiff, in particular, to levy the amount of the debt, the costs of the proceedings and his remuneration, on the property of the debtor.

2. The bailiff who executes the writ is entitled to claim from the debtor the fees to which the bailiff is entitled in addition to the amount owing by the debtor. Hence, three situations are likely to occur:

- the debtor pays the amount he was condemned to pay and the bailiff’s fees which he is otherwise required to pay pursuant to the writ, the said writ constituting an order of the Court;
- the debtor pays neither the amount he was condemned to pay nor the bailiff’s fees; in this case, there is seizure and judicial sale of the debtor’s property. In such a situation, the bailiff can deduct his fees from the proceeds of the sale of the property;
- the writ of seizure cannot be executed either because the debtor cannot be found or because he has no seizable property; in this case, the bailiff bills the creditor for the fees he is entitled to.

### APPLICATION OF THE ACT

3. If the debtor pays the bailiff’s fees, then these fees constitute consideration for a supply of which he is the recipient. In accordance with paragraph 2 of the definition of “recipient” provided for in section 1 of the Act, the debtor is the person who is liable to pay the consideration for the supply of the service performed by the bailiff. Consequently, the QST calculated on the bailiff’s fees must be collected from the debtor by the bailiff.

4. If the debtor pays neither the amount of the condemnation nor the bailiff's fees and this leads to seizure and judicial sale of his property, he being required to pay the bailiff's fees, then the debtor is considered, pursuant to paragraph 2 of the definition of "recipient" provided for in section 1 of the Act, to be the recipient of the supply made by the bailiff. Consequently, he must pay the applicable QST on the bailiff's fees. The bailiff, as mandatary for the Minister of Revenue, is then required to deduct his fees and the QST relating thereto from the proceeds of the sale of the debtor's property.

5. Lastly, if the debtor cannot be found or has no seizable property and the creditor pays the bailiff's fees, then the creditor is the recipient of the supply of the service for which he is being charged fees, under paragraph 1 of the definition of "recipient" provided for in section 1 of the Act. Indeed, in this case, the creditor is required to pay the consideration for the supply under an agreement for the supply. Therefore, the QST calculated on the value of the consideration for the supply, i.e. the bailiff's fees, must be collected from the creditor.

6. This bulletin has effect from July 1, 1992.