



Consumer Taxes

TVQ. 302-1 **The Collection of Rents on Immovables by a Person Other than the Lessor**

Date of publication: **April 28, 1995**

Reference(s): *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 302 to 317

This bulletin states how the *Act respecting the Québec sales tax* (the “Act”) applies to the collection and remittance of the Québec sales tax (QST) when rents on immovables are collected by a person other than the lessor, i.e. by his mandatary, by a hypothecary creditor, by a receiver or a trustee in bankruptcy (trustee).

References to civil law take into account the coming into force of the *Civil Code of Québec* (CCQ) on January 1, 1994.

INTRODUCTION

1. In accordance with section 422 of the Act, a person who makes a taxable supply of an immovable by way of lease, i.e. the lessor, must collect the QST payable by the lessee and include it in calculating his net tax.
2. Where rents, though, are collected by a person other than the lessor, specific rules may apply.
3. Thus, where the lessor entrusts the collection of rents to a third party, the rules relating to supplies made by a person as mandatary of another person apply (see the current version of interpretation bulletin TVQ. 37-1).
4. Where, pursuant to a rent hypothec clause, the hypothecary creditor collects rents without managing the immovable, other rules apply as discussed further on.
5. When a person acting in the capacity of a receiver manages the immovable and collects rents, the provisions of sections 310 and following of the Act apply.
6. When a trustee collects the rents, the rules provided for in sections 302 and following of the Act apply.

APPLICATION OF THE ACT

MANDATARY

QST Collection

7. The mandator, i.e. the lessor, must collect the QST payable in respect of the taxable supply of the immovable made by way of lease, unless the contract of mandate provides that the mandatory must collect it on behalf of the mandator.

Example

The owner of a commercial real property entrusts the collection of rents to an individual. That individual acts in the capacity of a mandatory and will collect the rents and the related QST on behalf of the owner pursuant to the terms of the contract entered into by the parties.

Returns

8. Even if the contract of mandate provides that the mandatory must collect the QST on behalf of the mandator, i.e. the lessor, it is the mandator who must include it in calculating his net tax. Indeed, since the supply is made by the mandator, it is the mandator who must, in his capacity of registrant, calculate his net tax in his return, which tax must include all the amounts of tax he must collect.

9. The contract may prescribe the obligation for the mandatory to submit, in respect of the assets managed, the returns containing the information required to be filed by the lessor, and to calculate for the lessor the input tax refunds (ITRs) to which the lessor is entitled, in accordance with sections 199 and following of the Act for the reporting periods ending in the period during which the mandatory is acting as the mandatory of the lessor.

MERE COLLECTION OF THE RENTS ON IMMOVABLES BY A HYPOTHECARY CREDITOR

QST Collection

10. According to section 422 of the Act, the person who makes a taxable supply of the immovable by way of lease, i.e. the lessor, must collect the QST payable by the recipient and include it in calculating his net tax.

Returns

11. Pursuant to section 428 of the Act, a hypothecary creditor who collects the QST on the rents on immovables instead of the lessor is required to include the amounts of tax collected in his own net tax.

12. Since, in calculating the net tax, the lessor is required to include the amounts of tax that have become collectible and the hypothecary creditor must, for his part, include the amounts of tax collected, the Ministère takes the measures required in order for the lessor to not render account of the QST collectible when the Ministère is convinced that the hypothecary creditor does indeed include the QST collected under his own registration number.

RECEIVER

Definition of Receiver

13. The following persons are receivers within the meaning of section 310 of the Act:

- a person who under the authority of a debenture, bond or other debt security, of a court order or of a provincial or federal Act, is empowered to manage or operate a business or property of another person;

Example

The hypothecary creditor assumes the management of the hypothecated immovable and exercises the rights of the borrower pursuant to the leases, including the collection of rents, further to the rent hypothec provisions contained in the hypothecary loan deed.

- a person who is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or property of the debtor under the debt security;
- a person who is appointed by a bank to act as mandatary of the bank in the exercise of the authority of the bank under subsection 3 of section 426 of the *Bank Act* (Statutes of Canada) in respect of property of another person;
- a person who is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation;
- a person who is appointed as a tutor or curator with authority to manage and care for the affairs and assets of an individual who is incapable of managing his affairs and assets;
- a person who is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to manage or operate a business or property of another person.

Example

In accordance with the rent hypothec provisions contained in the hypothecary loan deed, the hypothecary creditor assumes the management of the hypothecated immovable and exercises the rights of the borrower pursuant to the leases (collection of rents, etc.). He entrusts the management, leasing and other related tasks in respect of the immovable to a manager. The latter becomes the receiver instead of the creditor.

14. A hypothecary creditor who merely collects the rents without managing the immovable is not a “receiver” within the meaning of section 310 of the Act, though.

Time at which the Receiver Assumes his Duties

15. The receiver assumes the obligations incumbent upon him from the moment when he exercises the powers given to him.

Example

As allowed by article 2744 CCQ, a hypothecary loan deed may include rent hypothec provisions, associated with an authorization by the creditor to the borrower to collect the rents assigned as security until default of the borrower. During that period, the borrower is required to collect and remit the QST.

QST Collection

16. When vested with authority, the receiver is, under section 311 of the Act, deemed to act as the mandatary of the lessor in respect of any action he performs in connection with the immovable (assets managed).

QST Payment

17. According to section 313 of the Act, the receiver and lessor are jointly and severally liable for the payment or remittance of the amounts of QST payable or to be remitted by the lessor during the period during which the receiver is acting as receiver of the lessor and the amounts relate to the assets managed.

18. The lessor and the receiver are also jointly and severally liable for the payment or remittance of the amounts of QST payable or remittable by the lessor before the period during which the receiver is acting as receiver of the lessor and the amounts relate to the assets managed as they would have been constituted at the time at which the amounts became payable or remittable if the receiver had acted as receiver at that time.

19. According to the second paragraph of section 313 of the Act, though, the receiver is liable for the payment or remittance of amounts that became payable or remittable before the period during which he acted as receiver of the lessor only to the extent of the property and money of the person in possession or under the control and management of the receiver after

- (a) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the amounts; and
- (b) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the lessor.

20. In addition, the lessor is not liable for the remittance of any QST collected or collectible by the receiver.

Returns

21. The existence of a receiver has no incidence on the beginning or the end of the lessor's reporting periods.

22. However, the reporting period of the lessor, in relation to the assets managed by the receiver, ends on the particular day the receiver begins to act as receiver of the lessor and a new reporting period relating to the assets managed begins on the day immediately after the particular day. In

addition, this reporting period of the lessor in relation to the assets ends on the day the receiver ceases to act in that capacity.

23. In accordance with section 316 of the Act, the receiver is responsible for filing, in relation to the assets managed, the returns containing the prescribed information that is required to be filed by the lessor. He must also calculate for the lessor, the ITRs to which the lessor is entitled in accordance with sections 199 and following of the Act for the reporting periods ending in the period during which the receiver acts as receiver of the lessor.

24. The receiver files these returns in relation to the assets managed as if they were the only business, affairs, properties and assets of the lessor.

25. Unless waived in writing by the Minister, the receiver must also file such returns in relation to the assets managed for the reporting periods ending before the period during which he acts as receiver for the lessor, where the lessor did not file them within the prescribed time limits.

26. The lessor's QST registration number will be used, since the receiver is deemed to act as the mandatary of the lessor.

27. In the case where the receiver only manages part of the lessor's property, a lessor's branch account number will be attributed to the receiver in relation to the assets he manages, those assets being deemed to be separate from the rest of the lessor's assets.

Time at which the Receiver Ceases his Duties

28. When the receiver becomes the owner of the immovable, he ceases to be a receiver. From that time on, he makes the supply of the immovable by way of lease. According to section 422 of the Act, he must collect the tax payable by the lessee when making a taxable supply.

TRUSTEE IN BANKRUPTCY

29. Sections 302 and following of the Act apply in the case where the lessor becomes a bankrupt on a particular day.

Ownership of the Immovable

30. The bankrupt's immovable, immediately before the day of the bankruptcy, is deemed not to be transmitted to the trustee, nor to vest in the trustee at the time the receiving order is made or at the time the assignment is filed, but is deemed to remain the ownership of the bankrupt.

31. Consequently, the bankrupt is still considered to be the owner of the immovable and the person who makes the taxable supply of the immovable by way of lease.

Registration

32. The trustee will use the bankrupt's registration number for the activities relating to the bankruptcy.

Reporting Periods

33. The bankruptcy has no incidence on the beginning and the end of the bankrupt's reporting periods. For example, therefore, if the reporting period is monthly, it remains so.

34. However, the reporting period of the owner of the immovable during which the owner becomes a bankrupt ends on the day of the bankruptcy and a new reporting period in relation to the activities of the bankrupt to which the bankruptcy relates, begins on the day immediately after the day of the bankruptcy and ends on the date at which the bankrupt's normal period would have ended had the bankruptcy not occurred.

35. Lastly, the reporting period of the person in relation to the activities of which the bankruptcy relates, during which the trustee is discharged under the *Bankruptcy and Insolvency Act* (Statutes of Canada) ends on the day on which the discharge order is made.

Example

The owner of a commercial real property assigns his property on May 15, 1994. Before the bankruptcy, his reporting periods are monthly; they begin on the first day of each month and end at the end of the month. The trustee is discharged on September 25, 1994.

After the bankruptcy, the reporting period which began on May 1, 1994 and which should have ended on May 31, 1994, will end on May 15, 1994, the day of the bankruptcy. A return will be filed for the period from May 1 to May 15, 1994.

A new reporting period in relation to the activities of the bankrupt to which the bankruptcy relates, will begin on the day immediately following the day of the bankruptcy, i.e. May 16, 1994, and will end on May 31, 1994, on which date the bankrupt's normal period would have ended. The other periods begin on the first day of each month and end at the end of the month. The reporting period in which the trustee is discharged under the *Bankruptcy and Insolvency Act*, i.e. the period which began on September 1, 1994, will end on September 25, 1994, the date of the trustee's discharge.

APPLICATION DATE

Rule

36. Except as mentioned in the following articles, this interpretation has effect from July 1, 1992.

Exceptions

37. This interpretation applies to receivers who are vested with authority or appointed from January 1, 1993, and to the persons in respect of whose businesses, affairs, properties or assets those receivers are vested with authority or are appointed.

38. This interpretation applies from January 1, 1993, in respect of persons who become bankrupt and their trustees.