

## Consumer Taxes

LAF. 15-1/R3      **Notice of the Minister of Revenue to a Garnishee Under Section 15 of the *Tax Administration Act***

Date of publication:    **March 28, 2013**

Reference(s):      *Tax Administration Act* (CQLR, c. A-6.002), sections 15, 15.2.1, 15.3.0.1, 15.3.1, 15.5, 15.6, 15.7 and 15.8

*This version of interpretation bulletin LAF. 15-1 (formerly LMR. 15-1), supersedes the version of March 31, 2005. The interpretation remains the same. Only some style changes were made.*

This bulletin specifies the rights and obligations of the Minister of Revenue when a notice of seizure by garnishment is used to recover amounts owed by a fiscal debtor.

### APPLICATION OF THE ACT

#### SCOPE OF THE FIRST PARAGRAPH OF SECTION 15

##### Conditions of application

1. The first paragraph of section 15 of the *Tax Administration Act*<sup>1</sup> (TAA) applies to a person who, by virtue of an obligation existing at the time a notice from the Minister is received, is or will be bound to make a payment to a person owing an amount exigible under a fiscal law (hereinafter referred to as the “fiscal debtor”).
2. A notice from the Minister sent under the terms of the above provision does not confer upon the Minister greater rights than those held by the fiscal debtor with respect to the fiscal debtor’s own debtor. Therefore, the garnishee is bound to remit to the Minister the amounts owing to the fiscal debtor only as they become due.

##### Examples

3. The examples below illustrate the foregoing.

<sup>1</sup> This Act was formerly entitled *An Act respecting the Ministère du Revenu*. The title was changed by section 91 of chapter 31 of the Statutes of Québec 2010.

### *Money deposited in an account at a financial institution*

The Minister may send a notice of seizure by garnishment to a financial institution for the purpose of seizing any amount belonging to the fiscal debtor and deposited before or after the notice is received by the institution.

Upon receipt of the Minister's notice, the garnisheed financial institution must remit, to the Minister,

- all amounts in the fiscal debtor's account or accounts at the time the notice is received;
- all amounts that are deposited in the fiscal debtor's account or accounts after the notice is received, until release is given with respect to the notice; and
- all amounts payable on a fixed date (regardless of whether or not they are held in an RRSP) that are already payable or that become payable before release is given with respect to the notice.

### *Employment income*

The Minister may send a notice of seizure by garnishment to the fiscal debtor's employer.

In this case, the fiscal debtor must be employed by the garnishee at the time the notice from the Minister is received. Where such is the case, the employer is then bound to remit, to the Minister, the seizable portion of the fiscal debtor's salary or wages each pay period, for as long as the fiscal debtor remains employed by the garnishee and the amount claimed in the notice from the Minister, plus the interest subsequently accrued, has not been paid in full.

### *Accounts receivable*

A fiscal debtor may have a number of accounts receivable. In this case, the Minister may send a notice of seizure by garnishment to any person required to pay such an account receivable. Upon receipt of such a notice, the garnishee must first pay the Minister every outstanding amount and then remit to the Minister, as they become due, the amounts of any other accounts receivable arising from an obligation contracted before the notice from the Minister is received.

The garnishee is not required to remit to the Minister the amount of an account receivable arising from an obligation contracted after the notice from the Minister is received; in this case, the amount is not an amount covered by the notice from the Minister.

### *Rents*

The Minister has the right to require payment of any rents that are due to a fiscal debtor that owns an immovable.

If the rents from an immovable belonging to a fiscal debtor have been seized by garnishment, and the immovable is subsequently taken in payment by the hypothecary creditor, the Minister may require from the tenants the payment of rents due before the date on which the voluntary surrender is registered or before the date on which the judgment for a forced surrender is handed down, as applicable.

## **SCOPE OF THE SECOND PARAGRAPH OF SECTION 15**

### **Conditions of application**

4. The second paragraph of section 15 of the TAA concerns, in particular, the amounts owing by a garnishee to a secured creditor of a fiscal debtor where the amounts, but for the security, would have to be paid to the fiscal debtor.

### **Example**

5. The example below illustrates the foregoing.

#### *Hypothec on rents*

The rents from an apartment building owned by a fiscal debtor may be used to secure an obligation, such as in the case of a hypothec on rents in favour of a creditor. In this case, the Minister may send a notice of seizure by garnishment to all tenants of the building, even if there is a hypothec on the rents in favour of the creditor. Upon receipt of the notice, the garnisheed tenants will be required to pay to the Minister the rent currently owing, as well as all subsequent amounts of rent as they become due, even if the rents should normally have been paid to the secured creditor holding a hypothec on rents.

## **EFFECTIVE DATE OF SEIZURE BY GARNISHMENT**

6. Seizure by garnishment becomes effective on the date the notice of seizure is received by the garnishee.

7. When the notice of seizure by garnishment is served by a bailiff or an employee of Revenu Québec, the date of receipt by the garnishee corresponds to the date the notice is served upon the garnishee.

8. When the notice is sent by registered mail, the date of receipt corresponds to the date shown on the acknowledgement of receipt signed by the person to whom the notice was sent, or that person's representative.

## **COPY OF THE NOTICE SENT TO THE FISCAL DEBTOR**

9. The Minister sends the fiscal debtor a copy of the notice of seizure sent to the garnishee.

## **DURATION OF VALIDITY**

10. The notice from the Minister remains valid and binding until release is given by the Minister.

## **RELEASE WITH REGARD TO THE NOTICE**

11. Release with regard to the notice of seizure is given by the Minister when the tax debt covered by the notice is paid in full, or when the garnishee has satisfied all obligations toward the fiscal debtor.

## **LIABILITY OF A GARNISHEE THAT FAILS TO COMPLY WITH THE NOTICE**

**12.** A garnishee fails to comply with the notice if the garnishee makes the payment to a person other than the Minister, or simply refuses to make the payment.

**13.** In such cases, section 15.5 of the TAA provides that the garnishee is bound to pay to the Minister an amount equal to the payment made or to be made, up to the amounts exigible from the fiscal debtor.

**14.** The Minister may therefore issue a notice of assessment to the defaulting garnishee and take recourse against both the garnishee and the fiscal debtor. In short, the defaulting garnishee becomes a fiscal debtor of the Minister for an amount corresponding to the amount that should have been remitted to the Minister.

**15.** The amount thus assessed will itself bear interest from the date of issue of the notice of assessment in respect of the garnishee.