

Consumer Taxes

TVQ. 138-1/R2 Professional legal aid services
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Reference(s): *Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 138 and 399.1
 Regulation respecting the Québec sales tax (CQLR, c. T-0.1, r. 2), section
 399.1R1

This version of interpretation bulletin TVQ. 138-1 replaces that of December 30, 2008. It was revised to take into account the replacement of the mechanism exempting the Gouvernement du Québec and some of its mandataries from payment of the QST by a QST payment and rebate mechanism (see SQ 2012, c. 28, sections 141 and 181). This version has applied since April 1, 2013.

In addition, the name of the Legal Aid Act was changed to the Act respecting legal aid and the provision of certain other legal services, in accordance with section 1 of chapter 12 of the Statutes of Québec 2010, which entered into force on September 7, 2010 (see Order in Council 699-2010 of August 18, 2010).

This bulletin explains how the *Act respecting the Québec sales tax* (AQST) applies with respect to supplies of professional legal aid services and to the expenses incurred by an advocate for the preparation of an appeal factum in the performance of a legal aid mandate.

APPLICATION OF THE ACT

1. Pursuant to section 138 of the AQST, a supply of a professional legal aid service provided under a legal aid program authorized by the Gouvernement du Québec is exempt where the supply is made by a corporation responsible for administering legal aid under the *Act respecting legal aid and the provision of certain other legal services* (CQLR, c. A-14) (ALA).

EXEMPT SUPPLY OF PROFESSIONAL LEGAL AID SERVICES

2. Legal aid centres (LACs) established under the ALA—either a “regional legal aid centre” or a “local centre referred to in paragraph c of section 32”—provide professional legal aid services. These services, which are exempt supplies, may be performed by:

- (a) an advocate or a notary in the employ of an LAC; or

(b) an advocate or a notary in private practice who is given a mandate by an LAC.

3. Under certain circumstances, eligibility for legal aid may be contingent on the payment of a monetary contribution. In such cases, the recipient of legal aid is required to pay the contribution to the LAC providing the professional legal aid services or, where applicable, to the advocate or notary in private practice who is given the mandate by the LAC.

4. That contribution, paid to an advocate or a notary in private practice or to an LAC, constitutes a portion of the consideration for a supply of professional legal aid services provided under a legal aid program referred to in section 138 of the AQST, which is specified as an exempt supply. Therefore, Québec sales tax (QST) does not apply to the amount of the contribution.

SUPPLY OF PROFESSIONAL LEGAL AID SERVICES BY AN ADVOCATE OR A NOTARY IN PRIVATE PRACTICE TO AN LAC

5. A supply of professional legal aid services by an advocate or a notary in private practice to an LAC in the course of carrying out a mandate given to the advocate or notary by the LAC constitutes a taxable supply.

6. If the advocate or notary in private practice is a registrant, the QST applies and is payable by the LAC on the supply of professional services by the advocate or notary in carrying out a mandate given to them by the LAC.

INPUT TAX REFUND

7. In general, an advocate or a notary in private practice who is a registrant may claim an input tax refund (ITR), determined under sections 199 et seq. of the AQST, in respect of the property or services they receive for consumption, use or supply in the course of making a supply of professional legal aid services to the LAC (the recipient).

EXPENSES INCURRED BY AN ADVOCATE OR A NOTARY ACTING AS A MANDATARY

8. In providing a legal service, an advocate or notary may be called upon to make certain purchases of property or services for the client (an LAC). Some of those purchases of property or services may be made by the advocate or notary acting as a mandatary.

9. In that case, Revenu Québec's position is as follows: an expense may be considered an expense incurred by a mandatary for the purposes of the AQST only if it is first considered an expense incurred by a mandatary within the meaning of civil law.¹

10. Under the applicable civil law rules, in order for a person to be considered the mandatary of another person, the person must represent the other person in the performance of a juridical act with a third person.

¹ Chapter IX of Title Two of Book Five of the *Civil Code of Québec* entitled "Mandate."

EXPENSES RELATED TO THE PREPARATION OF AN APPEAL FACTUM

11. Where, in the performance of a mandate given by an LAC established pursuant to the ALA, an advocate in private practice incurs expenses to engage the services of a business specialized in the preparation of appeal factums (page layout, printing, binding, etc.), Revenu Québec considers that such expenses constitute expenses incurred by the advocate acting as the client's mandatary.

12. Since the advocate is acting as the LAC's mandatary in preparing appeal factums, they cannot claim an ITR in respect of the QST included on the supplier's invoice and paid by the advocate on the LAC's behalf. This expense incurred as the LAC's mandatary is not part of the consideration for the taxable supply of services made by the advocate for the LAC since the LAC is the recipient of the supply of the appeal factum preparation services.

13. An advocate who paid an appeal factum preparation invoice for the LAC can claim a reimbursement from the LAC, including QST.

14. Local legal aid centres and regional legal aid centres (referred to as an "LAC" in this bulletin) are the entities referred to in Schedule III of the *Regulation respecting the Québec sales tax* (RQST) and therefore constitute prescribed mandataries under section 399.1R1 of the RQST. In this regard, they qualify for the government rebate of the QST provided for in section 399.1 of the AQST. An LAC can therefore claim the government rebate to recover the QST it paid or is required to pay since it is the recipient of the supply of the appeal factum preparation services.