

Consumer Taxes

TVQ. 16-31 The Québec Sales Tax (QST) and the Judicial Costs and Extrajudicial Fees Charged to a Debtor

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Reference(s): *An Act respecting the Québec sales tax (CQLR, c. T-0.1), section 16*

This version of interpretation bulletin TVQ. 16-31 replaces the version of interpretation bulletin TVQ. 198-4 of May 31, 2000. The position set out in the bulletin remains unchanged. The bulletin number has been modified considering that the amount paid by the debtor is not consideration for a supply.

This bulletin discusses how the *Act respecting the Québec sales tax (AQST)* applies to the extrajudicial fees and the judicial costs charged to a debtor by a hypothecary creditor in the case of a repossession by the creditor of the charged property following non-payment of the loan by the debtor.

GENERAL CONSIDERATIONS

1. A hypothecary creditor may exercise repossession of the charged property in accordance with article 2748 of the *Civil Code of Québec (CCQ)* if the debtor, the owner of the property, defaults in his repayment of the hypothecary loan he took out. A creditor who intends to exercise such a hypothecary right must file with the registry office prior notice of any default by the debtor in fulfilling his obligations and reminding the debtor or a third party, as the case may be, of his right to remedy this default.
2. Article 2761 CCQ consequently provides that the debtor or the person against whom a hypothecary right is exercised, or any other interested person, may defeat exercise of the right by paying the creditor the amount due to him or, where that is the case, by remedying the omission or breach set forth in the prior notice and any subsequent omission or breach, and, in either case, by paying the costs incurred.
3. Thus, the costs incurred by a creditor may include, among others, extrajudicial fees, such as lawyers' fees, and judicial costs.

APPLICATION OF THE AQST

4. A creditor does not make any supply when the debtor reimburses him for extrajudicial fees and judicial costs associated with the exercise of his hypothecary rights. Consequently, the amount paid by the debtor does not constitute consideration for a supply, rather it arises from the legal obligation imposed by article 2761 CCQ. Therefore, the QST is not required to be collected by the creditor, nor is it required to be paid by the debtor in respect of such payment to the creditor.
5. This bulletin has effect from July 1, 1992.