

Consumer Taxes

TVQ. 321-2 **Judicial Sale, Sale by Judicial Authority and Sale by the Creditor of Corporeal Movable Property**

Date of publication: **November 30, 1998**

Reference(s): *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 320, 321, 323 and 324.5

This bulletin states how the *Act respecting the Québec sales tax* (the “Act”) applies to a judicial sale of corporeal movable property as well as to a sale of such property by judicial authority and by the creditor.

GENERAL CONSIDERATIONS

1. The corporeal movable property of a debtor who is in default may be subject to a judicial sale following its seizure in execution of a judgment condemning the debtor to pay an amount of money to his creditor. Furthermore, where the creditor holds a hypothecary right in respect of the corporeal movable property of the debtor, that property may be subject to a “sale by judicial authority” or a “sale by the creditor” in accordance with the provisions of the *Civil Code of Québec*.

APPLICATION OF THE ACT

Seizure and Repossession

2. Under section 320 of the Act, where at any time after July 1, 1992, the corporeal movable property of a debtor is seized or repossessed by the creditor for the purpose of satisfying in whole or in part a debt or other obligation owing by the debtor to the creditor under a right or power exercisable by the creditor, other than a right or power that the creditor has under, or because of being a party to, a lease, licence or similar arrangement by which the debtor acquired the property, the following rules apply:

- (a) the debtor is deemed to have made, and the creditor is deemed to have received, at that time a supply of the corporeal movable property by way of sale;
- (b) the supply is deemed to have been made for no consideration.

3. Under section 324.5 of the Act, where

- (a) for the purposes of satisfying in whole or in part a debt or other obligation owing by a person, a creditor exercises a right under a debt security to cause the supply of property; and
- (b) the property is not sold by the court pursuant to a garnishee order for the purpose of satisfying an amount owing under a judgment of the court (section 323 of the Act); and
- (c) a receiver, within the meaning assigned by section 310 of the Act, does not have authority in respect of the property;

the creditor is deemed to have seized the property immediately before the supply is made and that supply is deemed to have been made by the creditor and not by the person.

4. In the case of a sale by judicial authority and a sale by the creditor, the *Civil Code of Québec* provides that a creditor who intends to exercise his rights in respect of corporeal movable property by means of such a sale must give the debtor prior notice of his intentions and call upon the debtor to surrender the property within a period of time specified in the notice. At the expiry of that period, if the debtor has not surrendered the property the creditor must then apply to the courts to order that it be surrendered.

5. Thus, when the debtor surrenders the property, the creditor is then deemed, pursuant to section 324.5 of the Act, to have seized the property immediately before it is sold, thus giving rise to the application of section 320 of the Act.

Sale of the Property Seized or Repossessed

6. Subject to section 323 of the Act, section 321 of the Act provides that where at any time a creditor who has seized or repossessed corporeal movable property, in circumstances in which section 320 of the Act applies, makes a supply, other than an exempt supply, of the property, except where either of sections 323.2 or 323.3 applied at an earlier time in respect of the use of the property by the creditor, the creditor is deemed to have made the supply in the course of a commercial activity of the creditor.

7. Furthermore, according to section 323 of the Act, where a court, for the purpose of satisfying an amount owing under a judgment of the court, orders a sheriff, bailiff or other officer of the court to seize property of a debtor and subsequently makes a supply of the property, the supply of the property by the court is deemed to be made otherwise than in the course of a commercial activity.

8. Thus, in the case of a judicial sale, the creditor must obtain a judgment condemning the debtor to pay an amount of money. Once this judgment becomes enforceable, the creditor may petition the court to issue a writ of seizure of movable property in execution ordering an officer of justice to proceed with the seizure of the debtor's property in order that it be sold in justice.

9. That being the case, in light of the presumption provided for in section 323 of the Act, a supply of corporeal movable property of the debtor made in the course of such a judicial sale is deemed to be made otherwise than in the course of a commercial activity. Consequently, no tax is payable in respect of this supply.

10. In the case of a sale by judicial authority or a sale by the creditor, the creditor is not seeking a judgment of the court condemning the debtor to pay an amount of money. Rather, the creditor is realising the security he holds on the debtor's property. Thus, if the debtor fails to surrender the property within the time indicated in the prior notice served by the creditor, the latter petitions the court to order the surrender of the property for the purpose of its sale by authority of justice or its sale by the creditor. In the case of a sale by authority of justice, the creditor, among other things, petitions the court to designate a person who will proceed with the sale and to fix its conditions and charges. Thus, a supply made as part of a sale by authority of justice or a sale by the creditor is not covered by section 323 of the Act.

11. That being the case, it is the presumptions provided for in sections 320, 321 and 324.5 of the Act that apply to a sale by authority of justice and a sale by the creditor. In light of these presumptions, it is the creditor who is deemed to supply the property that was seized or repossessed as part of the sale by authority of justice or the sale by the creditor, and that supply is deemed to be made in the course of a commercial activity of the creditor. Consequently, where the creditor is a registrant and the supply of the property he makes therefore constitutes a taxable supply, other than a zero-rated supply, the creditor must collect the tax payable by the recipient in respect of that supply.

12. Moreover, the creditor may ask the bailiff who executes the judicial sale or the person designated by the court to proceed with the sale by judicial authority, as the case may be, to collect on his behalf, the tax he is required to collect. In such a case, the bailiff or the person must remit the tax to the creditor so that the latter may render account of it to the Minister in accordance with the Act.