

Consumer Taxes

TVQ. 427-1 Tax Recovery Further to an Assessment
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Reference(s): *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 422, 425, 428, 437 and 468

This bulletin states how the *Act respecting the Québec sales tax* (the “Act”) applies to the recovery of tax by a supplier.

TAX PAID BY A SUPPLIER FURTHER TO A NOTICE OF ASSESSMENT

The Obligations of a Registrant

1. Section 422 of the Act provides that every person who makes a taxable supply must, in general, collect the tax payable by the recipient.
2. Under the provisions of section 468 of the Act, every registrant is required to file a return with the Minister for each of his reporting periods.
3. Section 437 of the Act provides that every registrant who is required to file a return, shall in the return calculate his net tax for the reporting period for which the return is required to be filed. Where the amount of tax is a positive amount, the registrant is required to remit it to the Minister.
4. The net tax is calculated according to the provisions of section 428 of the Act. For a reporting period, it generally corresponds to the amounts collected and that became collectible by the registrant as or on account of tax under section 16 of the Act, from which are subtracted all amounts each of which is an input tax refund to which the registrant is entitled.

Assessment

5. A supplier who does not collect the tax payable at the time of a taxable supply, as provided for in section 422 of the Act, may, further to a notice of assessment issued under the provisions of the *Act respecting the Ministère du Revenu* (R.S.Q., c. M-31, as amended), be required to remit to the Minister the amount of uncollected tax.
6. Where the amount so assessed is paid to the Minister by the supplier, the Ministère considers that such amount of tax paid becomes an amount of tax collectible which the supplier included in calculating his net tax, and that such amount was remitted to the Minister in accordance with the provisions of sections 428 and 437 of the Act.

7. A supplier who paid the amount of tax referred to in the assessment is no longer a debtor of the Minister in respect of that amount since the Ministère considers that he fulfilled the obligations provided for in sections 428 and 437 of the Act.

RECOVERY OF THE TAX PAID FURTHER TO AN ASSESSMENT

8. A registrant who makes a taxable supply must, under section 425 of the Act, indicate the tax. The tax must be indicated according to regulatory terms and conditions, or on the invoice or receipt issued to the recipient, or in an agreement in writing.

9. If the tax was not indicated at the time of the transaction, the supplier may indicate it after the transaction if the facts and circumstances so allow. Thus, if an agreement in writing or other facts and circumstances do not so preclude, the supplier may issue another invoice modifying the original invoice or modifying the agreement in writing after the transaction on which the tax will be indicated. For example, a supplier who, at the time of supply, indicates "taxes included" on his invoice, cannot issue a second invoice indicating an amount of tax payable.

10. If the recipient is a registrant, he may claim an ITR for the amount of QST payable or paid to the supplier, where the provisions of the Act so allow.

11. Under section 427 of the Act, if the recipient refuses to pay the amount of tax due, the supplier may bring an action to recover the tax from the recipient.

Application of section 427 of the Act

12. According to the provisions of section 427 of the Act, a supplier has the right to bring an action to recover the tax if he has indicated the tax in accordance with section 425 of the Act and if he has accounted for or remitted the tax to the Minister.

13. As stated in 6 above, the tax paid further to an assessment is considered as an amount of tax remitted to the Minister under section 437 of the Act. Thus, a supplier who has indicated the amount of tax and who has paid the amounts of tax subject to an assessment, meets the conditions for bringing an action to recover the tax.

Tax Recovery

14. A supplier who recovers from his recipients, an amount of tax he paid further to an assessment does not have to remit that amount to the Minister.

15. This bulletin has effect from July 1, 1992.