

Consumer Taxes

TVQ. 520-1/R1 Suretyship and Credit Insurance
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Reference(s): *Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 507, 512 and 520

This version of interpretation bulletin TVQ. 520-1 replaces the version of February 29, 1996. The bulletin was revised to update its content. The interpretation and effective date of the bulletin (July 1, 1992) remain unchanged.

This bulletin explains how the tax on insurance premiums, provided for in Title III of the *Act respecting the Québec sales tax* (AQST), applies in respect of suretyship and credit insurance.

INTRODUCTION

1. Article 2333 of the *Civil Code of Québec* defines “suretyship” as a contract by which a person, the surety, agrees to be bound towards the creditor, gratuitously or for remuneration, to perform the obligation of the debtor if the debtor fails to fulfil it.
2. Section 20 of the *Regulation under the Act respecting insurance* (CQLR, chapter A-32, r. 1) defines “credit insurance” as insurance against loss to a creditor caused by non-payment of a debt.

THE ACT

3. Under section 512 of the AQST, every person subject to the tax on insurance premiums must pay such tax when paying an insurance premium.
4. Under subparagraph (1) of the second paragraph of section 507 of the AQST, any amount payable to obtain for oneself or another, on the occurrence of a risk, a benefit payable by an insurer or another person is deemed to be an insurance premium.
5. Moreover, under paragraph (10) of section 520 of the AQST, the tax on insurance premiums does not apply to the amount payable to obtain a surety.

APPLICATION OF THE ACT

6. The amount payable by a debtor or creditor to an insurer so that the latter undertakes to pay the debtor’s debt towards the creditor in cases such as the debtor’s insolvency qualifies as an insurance premium under subparagraph (1) of the second paragraph of section 507 of the AQST.

7. Accordingly, the tax on insurance premiums may apply to the premium payable, pursuant to section 512 of the AQST, to obtain such insurance, where the premium is paid by a person subject to the tax.

8. However, if such an undertaking was made under a suretyship arrangement, the tax on insurance premiums does not apply to the amount payable to obtain such surety, pursuant to the exemption provided for in paragraph (10) of section 520 of the AQST.

9. At times it is difficult to determine the legal nature of such an undertaking. In general, where the insurer and the debtor are not bound under the same obligation, the legal nature of the arrangement is not that of suretyship. Moreover, if the insurer's intervention in the relations between the debtor and the creditor does not result from the debtor's initiative (as is customary in suretyship) but from that of the creditor, the arrangement is not in the nature of suretyship; rather, it is a credit insurance arrangement, and the amount payable to obtain the coverage stipulated by that arrangement is subject to the tax on insurance premiums. In such a case, the exemption provided for in paragraph (10) of section 520 of the AQST cannot apply.