

Consumer Taxes

TVQ. 678-2/R1 Purchases Made by a Legal Aid Centre or Made in the Course of
Performing a Legal Aid Mandate

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Reference(s): *Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 138, 199 and
678

This version of interpretation bulletin TVQ. 678-2 replaces that of October 31, 2000. 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 discusses the application of the *Act respecting the Québec sales tax* (AQST) with respect to the purchases made by an advocate or a notary employed by a legal aid centre or by an advocate or a notary in private practice who has been given a mandate by such a centre.

APPLICATION OF THE ACT

Exempt supply of professional legal aid services

1. Under 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 and 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) is exempt. See the current version of bulletin TVQ. 138-1.
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 employed by an LAC;

(b) an advocate or a notary in private practice to whom an LAC has given a mandate.

Purchases made by an advocate or a notary employed by an LAC

3. As a body of the Gouvernement du Québec, an LAC is required to pay the Québec sales tax (QST) when it acquires a taxable supply of property or services through an advocate or a notary it employs, since the LAC is the recipient of the supply. Moreover, the LAC can recover the QST it paid or is required to pay through the government rebate set out in section 399.1 of the AQST.

Purchases made by an advocate or a notary in private practice to whom an LAC has given a mandate

4. An advocate or a notary in private practice who acquires property or services in the course of the performance of a mandate entrusted to them by an LAC, other than as a mandatary, must pay the QST on the supply. Indeed, since the advocate or notary is not employed by an LAC but rather acts as a subcontractor of the LAC, then the advocate or notary, and not the LAC, is the recipient of the property or services. Thus, the supplier is required to collect the QST from the advocate or notary.

5. However, an advocate or a notary in private practice who is a registrant can generally claim an input tax refund (ITR), determined in accordance with sections 199 and following of the AQST, on the property or services of which they receive the supply, other than as a mandatary, for consumption, use or supply in the course of making the supply of professional legal aid services, the recipient of which is the LAC.

6. The advocate or notary in private practice may have to make certain purchases of property or services as mandatary of the LAC. In such cases, they are required to pay the QST in respect of the supply of the property or services but cannot claim an ITR since the LAC is the recipient of the property or services. This applies to, for example, correspondent's fees, an advance paid to a sheriff (seizure of immovables), court stamp fees, registry office fees for the registration of real rights, fees for the sending of a 60-day notice (clause of "giving in payment"), fees for the issue of an incorporation certificate, fees for the reservation of a company name and fees for preparing appeal factums. However, an advocate or a notary who pays an invoice for such property or services for the LAC can claim a reimbursement, including QST, from the LAC.

7. Lastly, when the advocate or notary in private practice, acting other than as a mandatary, bills the LAC for the expenses they incurred with a view to being refunded therefor, the amount of these expenses is part of the consideration for the taxable supply of professional legal aid services provided to the LAC by the advocate or notary. See the current version of bulletin TVQ. 138-1, which explains that, as a body of the Gouvernement du Québec, the LAC must pay QST on a taxable supply it receives and can claim a government rebate of the QST it paid or is required to pay for the supply.

8. For the purpose of determining the small supplier's threshold, the advocate or notary in private practice must include the amount of these expenses in calculating their annual volume of taxable supplies. If the total amount of the taxable supplies exceeds the small supplier threshold, the

advocate or notary is required to register for and collect the QST on their taxable supplies, but may then claim an ITR in respect of these expenses. Moreover, if the advocate or notary is a small supplier and is not a registrant, they are not required to collect the QST on their taxable supplies and cannot claim an ITR on these expenses.

9. An advocate or a notary in private practice who is registered is required to pay the QST to the supplier of the property or services they acquire in the course of the performance of a mandate entrusted to them by an LAC. However, they can claim an ITR for the property or services if they are acting other than as a mandatary. In this case, they can bill the LAC for the net amount of the expenses incurred.

10. An advocate or a notary in private practice who is not registered or required to be registered must also pay the QST to their supplier but cannot claim an ITR. In this case, they can bill the LAC for the total amount of the expenses incurred.