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Section du dépôt légal



## Information Centre

**Clic Revenu**  
 Citizens Registration Access >>>  
**Clic Revenu**  
 Businesses Registration Access >>>

Tax News > Archives > Tax News 2007

Print | Share | 
 | 
 |

- News
- Press releases
- Tax News**
- Resource documents
- Events and exhibitions
- FAQ

### Second and third quarters

- GST and QST

### Tax News Summary

#### GST and QST

- [Overnight recreational camps](#)
- [Election respecting the supply of a business or part of a business](#)
- [Alternate collection method for direct sellers](#)
- [Documentary requirements for Internet sales](#)
- [Exports of intangible personal property](#)
- [Consultants' invoices](#)
- [Certain medical or surgical prostheses are zero-rated](#)
- [GST and QST rebate for visitors, foreign conventions and tours](#)
- [Increasing GST and QST annual filing and remittance thresholds for businesses](#)
- [Interest rates in effect for the GST](#)
- [CRA Publications](#)

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters

<b>The MRQ</b> Annual reports and action plans Laws administered by Revenu Québec Organization Chart Revenu Québec Tax Documents Available Online Role	<b>The Minister</b> About the Minister Responsibilities of the Minister Minister's Office	<b>Employment</b> A dynamic organization An interesting career Applying for a job at Revenu Québec	<b>Information Centre</b> All news Press releases FAQ Tax News Public relations activities
---	--	---	---

<b>Tax Evasion</b> Tax evasion and underground economy: consequences General information Voluntary disclosure Fines for tax offences Total taxes recovered for all tax audit activities	<b>Penalties and interest</b> Application for cancellation of interest, penalties or charges Penalties Interest rates on refunds Interest rates on debts
--	--



Support payments



Unclaimed property



Registraire des entreprises





CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access >>>

**Clic Revenu Businesses** Registration Access >>>

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - **Overnight recreational camps**
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
  - Consultants' invoices
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - Interest rates in effect for the GST
  - CRA Publications



### Overnight recreational camps

The recent Federal Court of Appeal decision in the *Camp Mini-Yo-We* case confirms that the supply of overnight recreational camps by a public service body is subject to the GST and the QST. The term "overnight recreational camp" refers to a camp that offers recreational activities and involves overnight supervision.

However, the supply by a public service body of day camps primarily for children aged 14 and under and of camps primarily for underprivileged and disabled individuals is not subject to the GST or the QST.

The term "public service body" includes charities, non-profit organizations, municipalities, school authorities, hospital authorities, public colleges, and universities.



### Other recent tax-related news

- The tax on lodging in the Québec City tourism region
- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

Contact Us >>>

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > Overnight recreational camps

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy: consequences

#### Penalties and Interest

Application for cancellation of interest, penalties or charges  
Penalties

Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax  
audit activities

Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access

**Clic Revenu Businesses** Registration Access

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - Overnight recreational camps
  - **Election respecting the supply of a business or part of a business**
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
  - Consultants' invoices
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - Interest rates in effect for the GST
  - CRA Publications



### Election respecting the supply of a business or part of a business

The supplier and the recipient under an agreement for the supply of a business or part of a business may make an election so that the GST and the QST are not payable in respect of the property and services supplied under the agreement (with some exceptions). **Such an election cannot be made, however, if the supplier is a registrant and the recipient is not a registrant.**

The election may be made only if certain conditions are met. For example:

- The supplier must supply a business or part of a business established or carried on by the supplier, or established or carried on by another person and acquired by the supplier.
- Under the agreement, the recipient must acquire ownership, possession or use of all or substantially all (usually at least 90%) of the property that can reasonably be regarded as necessary for the recipient to be able to carry on the business or part of the business.

To determine whether a supply meets those conditions, the following factors must be considered.

#### 1. Is a business or part of a business being supplied by the supplier and acquired by the recipient?

For purposes of the GST and the QST, a business includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether or not the activity or undertaking is engaged in for profit, but does not include an office or employment. The assets of a business usually include real (or immovable) property, equipment, inventory and intangible (or incorporeal) property, such as goodwill. In general, the supply of one or more assets is not considered a supply of a business. The nature of a business (or part of a business) normally determines which assets are necessary to carry on the business (or part of the business). As a rule, there is no one type of property, regardless of its value, which when supplied definitively indicates a supply of a business.

Generally speaking, a "part of a business" is an activity that may be a functionally and physically separate operating unit, or that supports or is related to the business but is organized as a separate activity capable of operating on its own.

#### 2. Is the recipient acquiring ownership, possession or use of all or substantially all of the property?

In order to meet the criterion of "all or substantially all" of the property, the value of any property not acquired under the supply agreement but necessary for the recipient to carry on the business (such as property acquired from other sources or property already in the recipient's possession) must not exceed 10% of the fair market value of all the property necessary to carry on the business.

Also, with the property the recipient acquires under the agreement, the recipient must be able to carry on the same kind of business established or carried on by the supplier.

To make the election, use form [FP-2044-V](#), *Election Respecting the Acquisition of a Business or Part of a Business*.

### Other recent tax-related news

- The tax on lodging in the Québec City tourism region
- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us

You are here: [Home](#) > [Department](#) > [Information Centre](#) > [Tax News](#) > [Archives](#) > [Tax News 2007](#) > [Second and third quarters](#) > **Election respecting the supply of a business or part of a business**

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents  
Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy: consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax audit activities

#### Penalties and Interest

Application for cancellation of interest, penalties or charges  
Penalties  
Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#)

Québec

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

My Account  
Citizens

Registration Access

Clic Revenu  
Businesses

Registration Access

Tax News > Archives > Tax News 2007

Print Share

News

Press Releases

**Tax News**

Resource Documents

Events and Exhibitions

FAQ

### Second and third quarters

#### ■ GST and QST

- Overnight recreational camps
- Election respecting the supply of a business or part of a business
- **Alternate collection method for direct sellers**
- Documentary requirements for Internet sales to Indians and Indian bands
- Exports of intangible personal property (incorporeal movable property for GST purposes)
- Consultants' invoices
- Certain medical or surgical prostheses are zero-rated
- GST and QST rebate for visitors, foreign conventions and tours
- Increasing GST and QST annual filing and remittance thresholds for businesses
- Interest rates in effect for the GST
- CRA Publications



### Alternate collection method for direct sellers

Direct sellers are persons that sell their products to consumers through distributors or independent sales contractors. An independent sales contractor purchases products from a direct seller, or from a distributor working for a direct seller, for resale to other sales contractors or to consumers.

To simplify accounting for the GST and the QST, many direct sellers elect to use the alternate collection method (ACM). Under the ACM, direct sellers, instead of accounting for the GST and the QST on their sales to sales contractors, account for the GST and the QST on the contractors' sales to consumers. Furthermore, some direct sellers sell their products to sales contractors that are distributors. Such sales contractors resell at least some of the products they buy to other sales contractors. In turn, the other sales contractors resell the products to consumers. In some cases, the distributor, instead of the direct seller, may account for the GST and the QST using the ACM.

#### Application to use the ACM

Direct sellers that elect to use the ACM must apply to Revenu Québec for approval before using the method for the first time. A distributor that elects to use the ACM must make a joint application with the direct seller. Applications to use the ACM must be made in writing and include the following information:

- identification of the direct seller (and the distributor(s), in the case of a joint application), that is,
  - the GST and QST registration number(s)
  - the full name(s) or business name(s)
  - the full address(es) and telephone number(s)
- the date on which use of the ACM is to begin
- a statement that the direct seller sells some products to consumers through sales contractors
- a statement certifying the following facts:
  - The sales contractors are neither agents (mandataries) nor employees of the direct seller or of the distributor(s).
  - The sales contractors do not solicit, negotiate or enter into contracts for the sale of products of the direct seller to consumers primarily (more than 50%) at a fixed place of business (other than a private residence).
  - The sales contractors have a contractual right to purchase products from the direct seller or from the distributor(s) for resale to other sales contractors or to consumers.
- a statement that the direct seller is aware that approval to use the ACM may be revoked if the direct seller or any distributor fails to comply with the *Excise Tax Act* or the *Act respecting the Québec sales tax*
- a statement certifying that the information provided in the application and in any document enclosed with the application is true, accurate and complete, to the best of the applicant's knowledge
- the signature(s) of the person(s) authorized to sign on behalf of the direct seller or the distributor(s)

Written confirmation of the date on which approval of an application takes effect is sent to the direct seller and the distributor(s).

#### Other recent tax-related news

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- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

#### Useful links

- New publications
- New forms
- Debts
- Refunds

#### Contact Us





CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access >>>

**Clic Revenu Businesses** Registration Access >>>

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

#### ■ GST and QST

- Overnight recreational camps
- Election respecting the supply of a business or part of a business
- Alternate collection method for direct sellers
- **Documentary requirements for Internet sales to Indians and Indian bands**
- Exports of intangible personal property (incorporeal movable property for GST purposes)
- Consultants' invoices
- Certain medical or surgical prostheses are zero-rated
- GST and QST rebate for visitors, foreign conventions and tours
- Increasing GST and QST annual filing and remittance thresholds for businesses
- Interest rates in effect for the GST
- CRA Publications



### Documentary requirements for Internet sales to Indians and Indian bands

In order to provide GST and QST relief to Indians and Indian bands at the time of a sale, certain conditions must be met.

The vendor must keep documentary evidence that the sale was made to an Indian or an Indian band, and that the property was sold on, or delivered to, a reserve, by the vendor or the vendor's agent. When purchasing over the Internet, the purchaser does not have the opportunity to present his or her Certificate of Indian Status card to the vendor at the time of the purchase. However, Revenu Québec allows for a copy of the status card to be mailed or sent electronically to the vendor to support the tax relief given to an Indian at the time of the sale. The information on the card must match the information provided online by the purchaser.



When transactions are made for the benefit of Indian bands, Revenu Québec considers a certificate indicating that the property is being acquired by a band to be satisfactory documentary evidence. In the case of an online purchase, the certificate may be mailed or sent electronically. The vendor must keep this certificate as evidence that the property was sold to an Indian band. If the certificate is received by email, the vendor must also retain the email in an electronically readable format.

When an online sale is made to an Indian or Indian band, documentary evidence that the property was delivered to a reserve by the vendor or the vendor's agent is only one of the conditions that must be met in order for the Indians and bands to receive GST and QST relief. If the other conditions stated in the bulletin *GST/HST Administrative Policy - Application of the GST/HST to Indians (TIB B-039R3)* are not fulfilled, the vendor must charge GST and QST.

Where an Indian or an Indian band purchases goods online that will be imported into Canada (even if the goods are delivered to a reserve in Canada), any applicable duties or taxes, including QST, must be paid to the [Canada Border Services Agency](#).

#### Other recent tax-related news

- The tax on lodging in the Québec City tourism region
- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

#### Useful links

- New publications
- New forms
- Debts
- Refunds

#### Contact Us >>>

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > **Documentary requirements for Internet sales to Indians and Indian bands**

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents  
Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the

#### Penalties and Interest

Application for cancellation of

underground economy:  
consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax  
audit activities

interest, penalties or charges  
Penalties  
Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access >>>

**Clc Revenu Businesses** Registration Access >>>

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - Overnight recreational camps
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - **Exports of intangible personal property (incorporeal movable property for GST purposes)**
  - Consultants' invoices
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - Interest rates in effect for the GST
  - CRA Publications



### Exports of intangible personal property (incorporeal movable property for GST purposes)

Effective March 20, 2007, supplies of intangible personal property made to persons that are not resident in Canada and not GST registrants are generally zero-rated, except for the following supplies of such property:

- a supply made to an individual unless the individual is outside Canada when the supply is made;
- a supply that relates to real property situated in Canada or to tangible personal property that is ordinarily situated in Canada;
- a supply that relates to a service that is performed in Canada and is not zero-rated as an export, a transportation service or a financial service;
- a supply where the property may be used only in Canada; or
- a supply that consists of making available to a person a telecommunications facility that is intangible personal property to be used for the emission, transmission or reception of a telecommunication service.

These new measures also apply to supplies of intangible personal property made before March 20, 2007, if GST was neither charged nor collected in respect of the supply.

If you are a GST registrant who made supplies of such property before March 20, 2007, and at the time your assessment of net tax for a reporting period was made, an amount was taken into account as GST and became collectible in respect of the supplies, you may obtain a refund of any resulting overpayment of net tax, penalty or interest by requesting that a reassessment be made to take into account the fact that no tax was collectible by you in respect of the supplies.

Before March 20, 2007, supplies of intangible personal property that could not be used in Canada were considered to have been made outside Canada and were therefore not subject to GST.

For more information, refer to the publication *Exports of Intangible Personal Property (GI-034)*.

#### Note

The QST applies to supplies of incorporeal movable property the same way the GST applies to supplies of intangible personal property, taking into account the Québec context of the QST system. Furthermore, the zero-rating rules under the QST system are the same as those under the GST system, even though the bill adding these measures to the *Act respecting the Québec sales tax* has not yet been assented to.

### Other recent tax-related news

- The tax on lodging in the Québec City tourism region
- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us >>>

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > Exports of intangible personal property (incorporeal movable property for GST purposes)

**The MRQ**  
Annual reports and action plans  
Laws administered by Revenu Québec

**The Minister**  
About the Minister  
Responsibilities of the Minister  
Minister's Office

**Employment**  
A dynamic organization  
An interesting career  
Applying for a job at Revenu

**Information Centre**  
All news  
Press releases  
FAQ

Organization Chart  
Revenu Québec Tax Documents  
Available Online  
Role

Québec

Tax News  
Public relations activities

**Tax Evasion**

Tax evasion and the underground economy: consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax audit activities

**Penalties and Interest**

Application for cancellation of interest, penalties or charges  
Penalties  
Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access

**Clic Revenu Businesses** Registration Access

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- **GST and QST**
  - Overnight recreational camps
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
- **Consultants' invoices**
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - Interest rates in effect for the GST
  - CRA Publications



### Consultants' invoices

Consultants registered for the GST and the QST are required to collect and report the GST and the QST on their base contract amount. The treatment of additional expenses depends on the agreement between the consultant and the client.

Consultants may or may not be agents (mandataries) of their clients. Where a consultant is not acting as an agent of its client, expenses incurred by a consultant that a client has agreed to reimburse are treated as additional consideration payable by the client for the consultant's services. The reimbursement for these expenses is treated in the same manner as the consultant's base contract amount, that is, the GST and the QST apply to the amount being reimbursed where the contract constitutes a taxable supply. As a registrant, the consultant can generally claim input tax credits and input tax refunds for the GST and the QST paid on the expenses.



Even if consultants are agents of their clients, they do not necessarily incur all of their expenses as agents. Therefore, it is important to determine whether the expense that is being reimbursed by the client has been incurred by the consultant as the client's agent.

Where the consultant incurs an expense to acquire a supply as the client's agent, the client is considered to be the recipient of the supply. The reimbursement for the expense incurred by the consultant as the client's agent is not treated as additional consideration and the consultant cannot claim an input tax credit or an input tax refund for the GST and the QST paid or payable on the supply.

In the above situation, the consultant passes on the expense, including any applicable GST and QST, to the client. The client can claim input tax credits and input tax refunds for the GST and the QST paid or payable on the consulting services, as well as for the GST and QST paid on the expense incurred by the consultant as the client's agent, as long as the services were provided in the course of the client's commercial activities.

However, if the supply is not subject to the GST and the QST when acquired by the consultant as an agent (for example, a zero-rated or an exempt supply), the supply is made to the client without GST and QST being charged, and no input tax credit or input tax refund can be claimed.

### Other recent tax-related news

- The tax on lodging in the Québec City tourism region
- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > Consultants' invoices

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents  
Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the

#### Penalties and Interest

Application for cancellation of

underground economy:  
consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax  
audit activities

interest, penalties or charges  
Penalties  
Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access

**Clic Revenu Businesses** Registration Access

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - Overnight recreational camps
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
  - Consultants' invoices
  - **Certain medical or surgical prostheses are zero-rated**
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - Interest rates in effect for the GST
  - CRA Publications



### Certain medical or surgical prostheses are zero-rated

As a rule, medical and assistive devices are taxable. However, section 25 of Part II of Schedule VI to the *Excise Tax Act* and section 176 of the *Act respecting the Québec sales tax* provide that the supply of a medical or surgical prosthesis that is designed to be worn by an individual is zero-rated.

A medical or surgical prosthesis is defined as an artificial device that replaces a missing part of the body, corrects a physical deformity or malfunction, or supports a weak or deformed part of the body. The artificial device may be an externally worn device or an implanted device that is worn internally.



For GST and QST purposes, supplies of the following items are zero-rated (that is, taxable at the rate of 0%):

- cardiac pacemakers
- implantable cardiac defibrillators
- synthetic valves
- stents (cardiovascular, esophageal, tracheobronchial, biliary, colonic, ureteral)
- peripheral vascular grafts and abdominal/thoracic grafts (flexible tubes in the shape of a vein or artery used to replace a damaged vein, vessel or artery)
- spinal implants and disc replacements

For more information, refer to the brochure *The QST and the GST/HST: How They Apply to Medical Devices and Drugs* ([IN-211-V](#)).

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- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > **Certain medical or surgical prostheses are zero-rated**

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy: consequences

#### Penalties and Interest

Application for cancellation of interest, penalties or charges  
Penalties

Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax  
audit activities

Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

My Account  
Citizens

Registration Access

Click Revenu  
Businesses

Registration Access

Tax News > Archives > Tax News 2007

Print Share

News

Press Releases

**Tax News**

Resource Documents

Events and Exhibitions

FAQ

### Second and third quarters

#### GST and QST

- Overnight recreational camps
- Election respecting the supply of a business or part of a business
- Alternate collection method for direct sellers
- Documentary requirements for Internet sales to Indians and Indian bands
- Exports of intangible personal property (incorporeal movable property for GST purposes)
- Consultants' invoices
- Certain medical or surgical prostheses are zero-rated
- **GST and QST rebate for visitors, foreign conventions and tours**
- Increasing GST and QST annual filing and remittance thresholds for businesses
- Interest rates in effect for the GST
- CRA Publications



### GST and QST rebate for visitors, foreign conventions and tours

The GST rebate for visitors was eliminated on April 1, 2007. However, a new Foreign Convention and Tour Incentive Program became effective on that date.

The new program continues to provide relief to non-residents for GST paid on certain property and services used in the course of conventions held in Canada, but does not include a rebate for property taken outside Canada by tourists. However, non-residents exporting products for their commercial activity can continue to claim a GST and QST rebate.

The program continues to provide relief for

- all the GST paid on accommodation sold to non-resident tour operators who are not registered for the GST and who include the accommodation in eligible tour packages for non-residents; and
- generally 50% of the GST paid on eligible tour packages that are sold to non-resident consumers and non-resident businesses, including tour operators, that are not registered for the GST.

The rebate also applies to the HST. Qualifying non-residents who paid 14% HST on an eligible tour package will receive a rebate generally equal to 50% of the 14% HST paid.

The QST rebate for visitors was eliminated effective October 1, 2000, for eligible property acquired to be taken out of Québec and the rebate on accommodation was eliminated effective November 1, 2001. However, the GST system provides various relief measures for conventions. For example, foreign convention organizers can claim a rebate on QST paid for the use of a convention facility and for certain convention-related supplies.

For more information on the GST/QST rebates, consult the following documents:

- [Rebate for Tour Packages, Foreign Conventions, and Non-Resident Exhibitor Purchases \(RC4160\)](#)
- [Visitor Rebate Program – Accommodation Rebate for Non-Residents \(GI-026\)](#)
- [Foreign Convention and Tour Incentive Program – Rebate for Non-Residents Purchasing Tour Packages \(GI-032\)](#)
- [Foreign Convention and Tour Incentive Program – Rebate for Non-Registered Non-Resident Tour Operators Purchasing Accommodation \(GI-033\)](#)
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- [Foreign Convention and Tour Incentive Program – Rebate for Non-Resident and Non-Registered Exhibitors \(GI-028\)](#)
- [Foreign Convention and Tour Incentive Program – Rebate for Sponsors of Foreign Conventions \(GI-029\)](#)
- [Foreign Convention and Tour Incentive Program – Rebate for Non-Registered Organizers \(GI-030\)](#)
- [Foreign Convention and Tour Incentive Program – Rebates Paid or Credited by Registrant Organizers of Foreign Conventions and Suppliers \(GI-031\)](#)



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- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

#### Useful links

- New publications
- New forms
- Debts
- Refunds

#### Contact Us

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy: consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax audit activities

#### Penalties and Interest

Application for cancellation of interest, penalties or charges  
Penalties  
Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access >>>

**Clic Revenu Businesses** Registration Access >>>

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - Overnight recreational camps
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
  - Consultants' invoices
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - **Increasing GST and QST annual filing and remittance thresholds for businesses**
  - Interest rates in effect for the GST
  - CRA Publications



### Increasing GST and QST annual filing and remittance thresholds for businesses

GST and QST annual filing and remittance thresholds will be changed for fiscal periods beginning after 2007. The changes will reduce the administrative burden of small and medium-sized businesses.

The threshold for an annual reporting period will be increased from \$500,000 to \$1,500,000. GST and QST registrants may complete an annual return if their taxable sales for a fiscal year do not exceed the new threshold of \$1,500,000. However, the registrant must elect to file an annual return by using the prescribed form.

In addition to the change pertaining to the annual return, the instalment base threshold will be increased from \$1,500 to \$3,000. Consequently, businesses that report GST and QST annually may make a single remittance at the end of the fiscal year if the amount of net tax to be remitted is less than \$3,000.

#### Note

For QST purposes, the reporting period of a registrant that is a clothing manufacturer must correspond to the registrant's fiscal month.

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- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us >>>

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > **Increasing GST and QST annual filing and remittance thresholds for businesses**

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents  
Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy:

#### Penalties and Interest

Application for cancellation of interest, penalties or charges

consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax  
audit activities

Penalties  
Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access >>>

**Clic Revenu Businesses** Registration Access >>>

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - Overnight recreational camps
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
  - Consultants' invoices
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - **Interest rates in effect for the GST**
  - CRA Publications



### Interest rates in effect for the GST

Prescribed interest rates are adjusted quarterly based on market trends. Penalties and interest related to the GST are calculated daily.

The prescribed annualized interest rates and the penalty rates for the quarterly periods from October 1, 2006, to September 30, 2007, are listed below.

Period	Annualized interest rate (%)	Penalty rate (%)
October 1 to December 31, 2006	3.5707	6
January 1 to March 31, 2007	3.6500	6
April 1 to June 30, 2007	9	*
July 1 to September 30, 2007	9	*

\* The penalty is equal to: (a) 1% of the amount overdue on the return, plus (b) one-quarter of the amount calculated in (a), multiplied by the number of complete months the return was overdue, to a maximum of 12 months.

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- Contract work performed by a contractor for a farmer
- Another vehicle added to the list of prescribed new hybrid vehicles
- Québec Budget of May 24, 2007: Measures concerning individuals
- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us >>>

You are here: Home > Department > Information Centre > Tax News > Archives > Tax News 2007 > Second and third quarters > **Interest rates in effect for the GST**

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy: consequences

#### Penalties and Interest

Application for cancellation of interest, penalties or charges  
Penalties

Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax  
audit activities

Interest rates on refunds  
Interest rates on debts



Support Payments



Unclaimed Property



Registraire des entreprises



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#) 

Québec 

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CITIZENS

BUSINESSES

ONLINE SERVICES  
FORMS AND PUBLICATIONS

DEPARTMENT

The MRQ The Minister Employment Information Centre Tax Evasion Penalties and Interest

## Information Centre

**My Account Citizens** Registration Access

**Clic Revenu Businesses** Registration Access

Tax News > Archives > Tax News 2007

Print Share

News Press Releases **Tax News** Resource Documents Events and Exhibitions FAQ

### Second and third quarters

- GST and QST
  - Overnight recreational camps
  - Election respecting the supply of a business or part of a business
  - Alternate collection method for direct sellers
  - Documentary requirements for Internet sales to Indians and Indian bands
  - Exports of intangible personal property (incorporeal movable property for GST purposes)
  - Consultants' invoices
  - Certain medical or surgical prostheses are zero-rated
  - GST and QST rebate for visitors, foreign conventions and tours
  - Increasing GST and QST annual filing and remittance thresholds for businesses
  - Interest rates in effect for the GST
  - **CRA Publications**



### CRA Publications

In recent months, the Canada Revenue Agency (CRA) has published or updated the following documents:

#### GST/HST Technical Information Bulletins

- Amendments to the Point-of-Sale Rebate for Printed Books ([B-094](#))
- Import Rules for Financial Institutions under Section 217.1 and Dealings Between Permanent Establishments under Section 220 ([B-095](#))

#### GST/HST Info Sheets

- ABM Services ([GI-006](#))
- Harmonizing the Administrative Provisions Respecting Standardized Accounting ([GI-024](#))
- The GST/HST and the Purchase, Use and Sale of Vacation Properties by Individuals ([GI-025](#))
- Visitor Rebate Program - Accommodation Rebate for Non-Residents ([GI-026](#))
- Foreign Convention and Tour Incentive Program - Admissions to Domestic Conventions Sold to Non-Residents ([GI-027](#))
- Foreign Convention and Tour Incentive Program - Rebate for Non-Resident Non-Registered Exhibitors ([GI-028](#))
- Foreign Convention and Tour Incentive Program - Rebate for Sponsors of Foreign Conventions ([GI-029](#))
- Foreign Convention and Tour Incentive Program - Rebate for Non-Registered Organizers ([GI-030](#))
- Foreign Convention and Tour Incentive Program - Rebates Paid or Credited by Registrant Organizers of Foreign Conventions and Suppliers ([GI-031](#))
- Foreign Convention and Tour Incentive Program - Rebate for Non-Residents Purchasing Tour Packages ([GI-032](#))
- Foreign Convention and Tour Incentive Program - Rebate for Non-Registered Non-Resident Tour Operators Purchasing Accommodation ([GI-033](#))
- Exports of Intangible Personal Property ([GI-034](#))
- Annual Information Schedule for Financial Institutions ([GI-035](#))
- Beverages ([GI-036](#))

#### GST/HST Guides

- GST/HST Information for Selected Listed Financial Institutions ([RC4050](#))

#### GST/HST Notices

- Questions and Answers on the Cancellation of the Visitor Rebate Program and the Implementation of the New Foreign Convention and Tour Incentive Program ([NOTICE221](#))

### Other recent tax-related news

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- Québec Budget of May 24, 2007: Measures concerning corporations
- Developments concerning the register of unclaimed property
- First instalment of the QST credit on August 31

### Useful links

- New publications
- New forms
- Debts
- Refunds

### Contact Us

#### The MRQ

Annual reports and action plans  
Laws administered by Revenu Québec  
Organization Chart  
Revenu Québec Tax Documents Available Online  
Role

#### The Minister

About the Minister  
Responsibilities of the Minister  
Minister's Office

#### Employment

A dynamic organization  
An interesting career  
Applying for a job at Revenu Québec

#### Information Centre

All news  
Press releases  
FAQ  
Tax News  
Public relations activities

#### Tax Evasion

Tax evasion and the underground economy: consequences  
Plan of action  
Voluntary disclosure  
Fines for tax offences  
Total taxes recovered for all tax audit activities

#### Penalties and Interest

Application for cancellation of interest, penalties or charges  
Penalties  
Interest rates on refunds  
Interest rates on debts



[Support Payments](#)



[Unclaimed Property](#)



[Registraire des entreprises](#)



[Accessibility](#) | [Privacy](#) | [Secure Email](#) | [Technical Support](#) | [Security](#)  
[Québec Government Programs and Services](#) | [RSS Feeds](#)

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