

Tax News

Third quarter 2001

In Brief

Are hospital beds taxable or zero-rated?

Hospital beds are zero-rated if they are supplied to health-care institutions or on prescription to incapacitated persons. They do not have to be sold to the person named in the prescription, but must be intended for that person.

To be considered a hospital bed, a bed must have certain features that meet the specific needs of hospitals and of persons with an impairment. At the very least, it must have

- a tilting, rigid mattress deck;
- a mattress deck with height and tilting mechanisms;
- a headboard and a footboard; and
- side rails.

The brochure entitled *The QST and the GST/HST: How They Apply to Medical Devices and Drugs* (IN-211-V) provides further information on the taxation of medical devices.

Tax credit respecting home-support services for seniors

Persons 70 years old or older who live in Québec, in a residential and long-term care centre that is not under agreement (and is, therefore, self-financing) may claim the tax credit respecting home-support services for seniors, in relation to eligible household services supplied to them. (The tax credit may also be claimed in this respect by seniors whose principal residence is a senior citizens' residence, a hotel or a rooming house.)

The following services give entitlement to the tax credit: services related to daily activities, meal preparation services, supervision and support services, civic-support services and services related to routine household tasks. For further details about eligible services, see the brochure entitled *The Tax Credit respecting Home-Support Services for Seniors* (IN-102-V).

Tax on insurance premiums

A QST registrant that pays tax on the premiums for an insurance policy taken out in relation to the registrant's commercial activities cannot claim an input tax refund (ITR) respecting the tax paid. The tax on insurance premiums is a distinct tax from the Québec sales tax, and does not give entitlement to ITRs. (Moreover, under the QST system, insurance policies are zero-rated and do not give entitlement to ITRs.)

Example

The owner of a convenience store pays \$45 in sales tax on the insurance premiums for building insurance. Despite being a QST registrant, the owner cannot claim an ITR respecting the tax paid.

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Revenu

Québec



In Brief (cont.)

Two points concerning GST and QST returns

Supporting documents should not be enclosed with GST and QST returns, as the inclusion of such documents simply delays processing. You should, however, keep all supporting documents on file with your books and registers, in case of a future audit by the Ministère.

As GST and QST returns are processed electronically (and not by hand), comments or questions written on them will not come to our attention. We suggest that you contact the office of the Ministère in your area—we will be glad to hear from you and answer your queries.

Small supplier registration

Small suppliers may register for the GST and QST if they choose (although in most cases they are not required to do so). Those who opt to register become agents of the Ministère du Revenu du Québec, and are required to collect the taxes on all taxable supplies and make remittances to the Ministère. For further details concerning small suppliers, see the brochure entitled *Should I Register with the Ministère du Revenu?* (IN-202-V).

Quick Method of Accounting: A reminder

If you use the Quick Method of Accounting, you are not required to remit the full amount of GST and QST collected. However, under both the Taxation Act (Québec) and the Income Tax Act (Canada), any unremitted portion of taxes must be added to your business income.

For further details concerning the Quick Method, see the brochure entitled *General Information concerning the QST and the GST/HST: Guide for Registrants* (IN-203-V) or contact the office of the Ministère du Revenu du Québec in your area.

Are You an Authorized Person?

Did you know that only an “authorized person” (or “authorized representative”) is empowered to act on behalf of another person?

Mandate and power of attorney

In order to act on behalf of another person in dealings with the Ministère du Revenu, an authorized representative must provide a document (a mandate) in which the representative is clearly identified and the nature of the mandate is specified. The mandate must also include an authorization (a power of attorney) given by the mandator (the person granting the mandate) empowering the Ministère to disclose information respecting his or her tax file to the representative. The mandate must be signed by the mandator.

In order to act on behalf of your spouse in dealings with the Ministère, you must have a mandate from your spouse that fulfils the criteria outlined above.

Various categories of authorized persons

A **curator** (including the Public Curator), a **tutor** (such as the Director



of Youth Protection) or an **adviser** (in the case of a person of full age) may act as the authorized representative of another person. The curator, tutor or adviser must be so appointed by the court, and a copy of the court judgment must be provided.

The **liquidator** of a succession may act as the authorized representative of a deceased person. However, proof of the liquidator's appointment to act in that capacity (such as a copy of the will or the heirs' decision to appoint a liquidator) and the death certificate must be provided.

A **notary** who is involved in the making of a sales contract with respect to

an immovable must have a written mandate to obtain confidential information concerning the transaction.

A **trustee** in bankruptcy may act as the authorized representative of a bankrupt in respect of tax information to which the bankrupt would normally have access, until such time as the bankruptcy is discharged.

A **preparer of paycheques or income tax returns** must present a written mandate from the client to obtain access to confidential information concerning the client.

An **EFILE preparer** is considered an authorized representative solely in respect of income tax returns filed electronically by the preparer.

The **president, vice-president, secretary and treasurer** of a corporation are recognized as authorized representatives of the corporation, provided their appointment to those positions can be substantiated.

A **former director** or **officer** of a dissolved provincially licensed corporation may not obtain confidential information respecting the corporation. The Public Curator is the only person authorized to exercise the corporation's rights and recourses. In the case of a dissolved federally registered corporation, however, a former director or

Are You... (cont.)

officer may continue to act as the corporation's authorized representative with respect to procedures undertaken before the dissolution.

Legal persons and consulting firms

A **legal person** or a **consulting firm** may also act as the authorized representative of another person. In such cases, a written authorization or mandate must be provided, in which the legal person or consulting firm is identified as the authorized person in respect of dealings with the Ministère du Revenu.

Change of address

A change of address may be requested by an authorized representative acting on behalf of another person and may be addressed to the Ministère verbally or in writing, provided the representative's mandate contains specific authorization for that purpose. A legal person requesting a change in the address of its head office **must do so in writing**.

Copyright Income

Are you an artist?¹ Over the past few years, have you claimed a deduction for copyright income in your income tax return? If so, the following article will be of interest to you.

Copyright income is indicated on the RL-3 slip (box H: Royalties from Canadian sources). However, various types of income may be reported in box H, as it is not reserved exclusively for copyright income.

When income tax returns are processed by the Ministère, the income in this box is automatically added to the income shown on line 130 (interest from Canadian sources and other investment income), along with any other income reported on the RL-3 slip. This is done even if the copyright income has already been included in the person's business and professional income.

The Ministère has modified this procedure. As of the 2000 taxation year, copyright income is no longer systematically added to interest income. For



years prior to the 2000 taxation year, the Ministère has modified a number of income tax returns, further to requests by persons reporting copyright income. If you earned copyright income and believe that this income was double-taxed, please contact the office of the Ministère in your area.

1. Within the meaning of the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters or the Act respecting the professional status and conditions of engagement of performing, recording and film artists

Recent Developments concerning Proposals in Bankruptcy

As the result of a recent judgment by the Québec Court of Appeal, an income tax return submitted by a person who has filed a proposal in bankruptcy or a consumer proposal will henceforth be treated differently.

A **proposal in bankruptcy** is a payment offer made by an insolvent person to his or her creditors in order to avoid bankruptcy, or by a bankrupt to end his or her bankruptcy. A **consumer proposal** is a payment offer similar to a proposal in bankruptcy, but is subject to a fast-track procedure. It may be made by a bankrupt or an insolvent person whose total debts, excluding those secured by his or her principal residence, do not exceed \$75,000 (or any other prescribed amount).

Further to the new ruling, the end-date of the taxation year is now deemed to coincide with the date of filing of a proposal in bankruptcy, a notice of intention to make a proposal in bankruptcy, or a consumer proposal. Previously, the Ministère du Revenu was of the opinion that section 779 of the Taxation Act applied only to bankruptcies. However, the Québec Court of Appeal concluded that this provision refers implicitly to proposals in bankruptcy. As a result, income tax payable on income earned until the date of filing of the proposal in bankruptcy now constitutes a provable claim which must be paid in accordance with the terms of the proposal.

QST returns are also affected by the conclusions of this judgment. A registrant's reporting period is now deemed to end on the date of filing of a proposal in bankruptcy, a notice of intention to make a proposal in bankruptcy, or a consumer proposal.

However, it should be noted that, even if the calculation rules applicable to a bankrupt's income tax return now apply to the return of a person filing a proposal, the act of filing a proposal in bankruptcy does not have the same effect as a bankruptcy. For example, in the case of a proposal in bankruptcy, a trustee is not solidarily liable for a corporation's income tax payable. Nor is the trustee required to file a separate income tax return, since the assets of the person making the proposal are not vested in the trustee as they would be in the case of a bankruptcy. Moreover, a person making a proposal in bankruptcy, unlike a bankrupt, may carry forward to a subsequent year the losses sustained before the date of filing of the proposal, subject to certain restrictions.

The Benefit Related to the Use of an Automobile

What constitutes a taxable benefit?

As a rule, when an employer (or a person related to the employer) makes an automobile available to an employee (or a person related to the employee), the employee receives a taxable benefit, and the value of that benefit (determined by the Taxation Act) must be included in the calculation of the employee's income and entered on the RL-1 slip. In certain cases, however, employers may find it difficult to determine whether the benefit related to the use of such an automobile constitutes a taxable benefit. The following explanations will help to clarify the situation.

Automobile

An automobile is a motor vehicle that is designed or adapted primarily to transport individuals on highways and streets and that seats no more than nine persons, including the driver. However, the term "automobile" does not include

- ambulances;
- motor vehicles acquired or leased primarily to provide taxi services;
- buses used by a transit company;
- hearses used in the course of a business of arranging or managing funerals; or
- pick-up trucks, vans or similar vehicles that, in the taxation year in which they are acquired, are used primarily for the transportation of goods or equipment for the purpose of earning income; seat no more than three persons, including the driver; and may also be used entirely or almost entirely to transport goods or passengers for the purpose of earning income.

Where the benefit related to the use of an automobile is not granted by reason of the employee's office or employment, the term "automobile" does not include

- a motor vehicle acquired or leased to be sold, rented or leased in the course of a business of selling, renting or leasing motor vehicles; or

- a motor vehicle used to transport passengers in the course of a business of arranging or managing funerals.

Motor vehicle

A motor vehicle is an automotive vehicle designed or adapted for use on highways or streets, but does not include a trolley bus or a vehicle designed or adapted to be operated exclusively on rails.

Making an automobile available to an employee

An employer makes an automobile available to an employee where the employer entrusts the automobile to the care and control of the employee and authorizes the employee to make personal use of the automobile or does not forbid such use. However, the benefit related to the use of the automobile is not taxable where the employee uses the automobile solely for the purposes of his or her office or employment, even if the vehicle was made available to the employee throughout the year. The benefit is taxable if the employee makes personal use of the automobile or is not required to use it for office- or employment-related purposes.

Personal use of an automobile

Personal use of an automobile corresponds to its use by an employee (or a person related to the employee) for purposes that are other than office- or employment-related. Therefore, an employee who uses the employer's automobile to travel between the employee's residence and the workplace makes personal use of the automobile, even if the employee is required to return to work after regular working hours. However, where an employer asks or allows an employee (such as a travelling sales representative) to use the automobile to travel directly from the employee's residence to a place other than the employee's usual workplace, or to return from that place to



his or her residence, such use of the automobile is considered to be professional.

The notion of "personal use" may also apply (and consequently give rise to a taxable benefit) where the vehicle made available to the employee is not an automobile.

Passenger vehicle

To be considered a passenger vehicle, an automobile must have been acquired after June 17, 1987, or leased under a lease entered into, extended or renewed after June 17, 1987. An automobile acquired after that date pursuant to an obligation in writing entered into before June 18, 1987, is not considered to be a passenger vehicle. In general, automobiles, station wagons, vans, pick-up trucks and similar vehicles are considered to be passenger vehicles.

For more information on the benefit related to the use of a motor vehicle, refer to the brochure *Taxable Benefits* (IN-253-V).

Expenses Related to the Use of a Motor Vehicle



Capital cost allowance (depreciation)

As a rule, the capital cost of a motor vehicle corresponds to the total amount paid at the time of its purchase, including

- the amount granted for a used vehicle accepted as a trade-in by the vendor;
- the cost of all accessories and equipment installed before and after delivery; and
- the GST and the QST (or the applicable provincial sales tax) paid with respect to the vehicle, minus the input tax credits (ITCs) and input tax refunds (ITRs) remitted or credited to the purchaser.

Ceiling on capital cost allowance

However, certain limits apply to the calculation of capital cost allowance on passenger vehicles; these limits are based on the date of acquisition of the vehicle. The maximum is

- \$20,000 per passenger vehicle acquired after June 17, 1987, but before September 1, 1989;
- \$24,000 per passenger vehicle acquired after August 31, 1989, but before 1997;
- \$25,000 per passenger vehicle acquired in 1997;
- \$26,000 per passenger vehicle acquired after 1997, but before 2000;

- \$27,000 per passenger vehicle acquired in 2000;
- \$30,000 per passenger vehicle acquired after 2000.

Special rules exist for ITCs and ITRs claimed in respect of passenger vehicles. For more information, refer to the article "The Concept of Use in Commercial Activities" in the issue of *Tax News* for the third quarter of 2000.

Parental Insurance Plan

In January 1997, the government released a White Paper entitled *New Elements of the Family Policy*. The paper proposed that a parental insurance plan be introduced to help individuals reconcile their parental and work responsibilities.

The application of the tax system to the new parental insurance plan was outlined in the 1997-1998 Budget Speech, but implementation of the plan was conditional on an agreement being reached with the federal government. The subsequent negotiations were inconclusive in several important areas and, in August 1997, the Gouvernement du Québec announced that implementation of the plan was postponed. Work to define a new parental insurance plan nonetheless continued, and draft legislation was tabled in the National Assembly on June 6, 2000.

Bill 140, which was adopted on May 25, 2001, as the Act respecting parental insurance, instituted a parental insurance plan whose parameters are substantially different from those proposed in the 1997 White Paper. For details of the new plan, see information bulletin 2000-5, which is available on the Web site of the Ministère des Finances at www.finances.gouv.qc.ca. You may also consult the Web site (French only) of the Ministère de la Famille et de l'Enfance at www.mfe.gouv.qc.ca.

The date of coming into force of Bill 140 will be determined by the government.



Electronic remittance services

An article concerning electronic remittance services appeared on page 8 of the issue of *Tax News* for the fourth quarter of 2000. The article stated that, for the period 1999-2000, various financial institutions made more than 600,000 remittances representing a total of \$6.4 million. The actual total is \$6.4 **billion**.

Sales of eyeglasses and contact lenses

An article concerning sales of eyeglasses and contact lenses appeared on page 6 of the above-mentioned issue. The first paragraph reads as fol-

lows: "Eyeglasses (with or without frames) and contact lenses are zero-rated provided they were prescribed by a legally qualified professional for the purpose of correcting or treating a person's visual problems. This is also the case for clip-on prescription sunglasses sold as an accessory along with the eyeglasses, and for ordinary prescription sunglasses."

The paragraph should have read as follows: "Eyeglasses (with or without frames) and contact lenses are zero-rated provided they were prescribed by a legally qualified professional for the purpose of correcting or treating a person's visual problems. This is also the case for **prescription**

sunglasses and for clip-on sunglasses designed as a specially adapted accessory to be worn with prescription eyeglasses."

Interest rates

Lastly, in the article "In Your Interest" appearing on page 7 of the issue of *Tax News* for the first and second quarters of 2001, the penalty rate in respect of the GST for the period of April 1 through June 30, 2001, was indicated as 6.5%. The rate for that period is in fact **6%**.

The Tax on Lodging in the Québec City Tourism Region

The Québec City tourism region, following the example of the Montréal and Laval tourism regions, has opted to participate in the tourism partnership fund, which was established by the Gouvernement du Québec in order to bolster and promote the Québec tourism industry.

Consequently, beginning on July 1, 2001, the specific tax on lodging of \$2 per overnight stay applies to sleeping-accommodation units in the Québec City tourism region. The tax must be charged for each such unit occupied (and for which the rental is billed) after June 30, 2001.

The operator of a sleeping-accommodation establishment is not required to collect the tax on lodging in respect of the rental of sleeping-accommodation units billed to a travel agent (or other intermediary), where the price of the rental is fixed pursuant to an agreement entered into by the operator and the intermediary before July 1, 2001, and the units are to be occupied during the period after June 30, 2001, and before April 1, 2002.

A regional tourism association (RTA) wishing to participate in the tourism partnership fund must apply to the government to do so. The revenues



generated by the tax (minus the costs of administering the tax) are remitted to the participating regions and are used in accordance with the terms and conditions set forth in a memorandum of understanding between Tourisme Québec and the RTAs of the participating regions.

Municipalities in the Québec City tourism region

| | | | |
|------------------------|-----------------------------|---------------------------------|-----------------------------|
| Beauport | Lac-Sergent | Saint-Ferréol-les-Neiges | Saint-Tite-des-Caps |
| Beaupré | L'Ancienne-Lorette | Saint-François | Saint-Ubalde |
| Boischatel | L'Ange-Gardien | Saint-Gabriel-de-Valcartier | Sainte-Anne-de-Baupré |
| Cap-Rouge | Loretteville | Saint-Gilbert | Sainte-Brigitte-de-Laval |
| Cap-Santé | Neuveville | Saint-Jean | Sainte-Catherine-de-la- |
| Charlesbourg | Notre-Dame-de-Portneuf | Saint-Joachim | Jacques-Cardier |
| Château-Richer | Notre-Dame-des-Anges | Saint-Laurent-de-l'Île- | Sainte-Christine-d'Auvergne |
| Deschambault | Québec | d'Orléans | Sainte-Famille |
| Donnacona | Pont-Rouge | Saint-Léonard- | Sainte-Foy |
| Fossambault-sur-le-Lac | Portneuf | de-Portneuf | Sainte-Pétronille |
| Grondines | Rivière-à-Pierre | Saint-Louis-de-Gonzague- | Shannon |
| Lac-Beauport | Saint-Alban | du-Cap-Tourmente | Sillery |
| Lac-Delage | Saint-Augustin-de-Desmaures | Saint-Marc-des-Carières | Stoneham-et-Tewkesbury |
| Lac-Saint-Charles | Saint-Basile | Saint-Pierre-de-l'Île-d'Orléans | Val-Bélair |
| Lac-Saint-Joseph | Saint-Casimir | Saint-Raymond | Vanier |
| | Saint-Émile | Saint-Thuribe | Wendake |

In articles discussing the GST and the QST, the term "sale" is generally used instead of the term "supply," as a sale is the most common form of supply.

Purchases or Trade-Ins of Used Property

If you accept used property as a trade-in for property you sell, special rules apply to the transaction, depending on whether the person trading in the property (hereafter referred to as the "vendor") is registered for the GST and the QST.

• Vendors that are registrants

Vendors registered for the GST and the QST must collect the taxes on the value of the property traded in, where the property has been used for commercial activities. If you accept used property as a trade-in, you must collect GST and QST on the full selling price of the property you sell to the vendor. There are therefore two separate transactions.

Example

The ABC company sells machinery to the XYZ company for \$50,000 and offers XYZ a \$20,000 trade-in for its old machinery. Both companies are registrants.

Invoice produced by ABC

| | | |
|----------------------------|---|--------------------|
| Selling price | | \$50,000.00 |
| GST (7% x \$50,000) | + | \$3,500.00 |
| QST (7.5% x \$53,500) | + | <u>\$4,012.50</u> |
| Total | | \$57,512.50 |
| Trade-in (including taxes) | - | <u>\$23,005.00</u> |
| Net amount charged to XYZ | | \$34,507.50 |

Invoice produced by XYZ

| | | |
|-----------------------------|---|-------------------|
| Selling price | | \$20,000.00 |
| GST (7% x \$20,000) | + | \$1,400.00 |
| QST (7.5% x \$21,400) | + | <u>\$1,605.00</u> |
| Total amount charged to ABC | | \$23,005.00 |

Both you and the vendor may claim an input tax credit (ITC) and an input tax refund (ITR) with respect to the GST and the QST paid, since the property was acquired in the course of your respective commercial activities. On both invoices, the amount of GST and QST collected must be indicated, as well as the Business Number (for GST purposes) and the identification number (for QST purposes) of the person supplying the property.

• Vendors that are non-registrants

Vendors that are non-registrants do not collect GST and QST on the value of the property traded in. (Under the QST system, there is an exception with respect to road vehicles. Refer to the following section.) You must calculate the GST and the QST on the net amount of the sale, that is, the amount obtained by subtracting the value of the trade-in from the selling price of the property sold.

Example

Green Grass Inc. sells a lawnmower to Bob for \$500 and offers Bob \$100 as a trade-in for his old lawnmower. Green Grass Inc. is a registrant; Bob is a non-registrant.

| | | |
|------------------------|---|-----------------|
| New lawnmower | | \$500.00 |
| Lawnmower traded in | - | <u>\$100.00</u> |
| Net amount of the sale | | \$400.00 |
| GST (7% x \$400) | + | \$28.00 |
| QST (7.5% x \$428) | + | <u>\$32.10</u> |
| Total net amount | | \$460.10 |

Green Grass Inc. is not entitled to an ITC or an ITR.



Trade-ins of road vehicles

Under the GST system, trade-ins of road vehicles are subject to the above-mentioned rules. The same is generally true under the QST system. However, the sale is zero-rated and no QST is collected if the vehicle is sold to a registered dealer who acquires it solely for the purposes of resale or lease under an agreement of no less than one year's duration.

Where the QST applies to used vehicles, the tax is calculated on the estimated value of the vehicle. The Société de l'assurance automobile du Québec is responsible for collecting the tax.

Acquisition of a Business or Part of a Business

A supplier may sell a business or part of a business to a recipient without GST or QST being payable on the property or services supplied under the agreement (with some exceptions), if both parties to the transaction make an election to that effect. The election cannot be made, however, where the supplier is a registrant and the recipient is a non-registrant.

In order for the election to be made, certain conditions, including the following, must be met:

- The supplier must be selling a business or part of a business that was established or carried on by the supplier, or that was established or carried on by another person and acquired by the supplier.
- Under the agreement, the recipient must be acquiring all or substantially all (generally 90% or more) of the property that can reasonably be regarded as necessary for the recipient to carry on the business or part of a business.

In determining whether a transaction meets the above-mentioned conditions, the guidelines described below should be applied.

1. Is the supplier selling, and is the recipient acquiring, a business or a part of a business?

For GST/QST purposes, a business is an activity including a profession, calling, trade, manufacture, or undertaking of any kind, but not including an office

or employment. The assets of a business usually include immovable (real) property, equipment, inventory, and incorporeal (intangible) property such as goodwill. Ordinarily, the sale of one or more individual assets is not considered a sale of a business, even if the assets concerned are valuable and are indispensable to the operation or establishment of the business. For example, the sale of a trademark, a customer list or intellectual property rights does not constitute a sale of a business if sold alone. Generally, no one type of property, regardless of its value, determines whether there has been a sale of a business.

In general, a "part of a business" is an activity that may be a functionally and physically distinct operating unit with its own goodwill, which the recipient can practically begin operating the day after the acquisition. A part of a business may also be an activity which supports or is related to the broader business but is organized as a separate activity capable of operating on its own. For example, the supply of a production line including all equipment, inventory and incorporeal property such as a product formula, among other assets, may be considered to be the sale of a part of a business.

2. Is the recipient acquiring all or substantially all of the property?

Any property not acquired under the sales agreement (e.g., property acquired from other sources or already in the

possession of the recipient), but required by the recipient to carry on the business, must fall within the remaining general margin of 10% of the fair market value of all the property required to carry on the business. For example, where the immovable property used in the supplier's business is not acquired by the recipient (e.g., the recipient intends to rent facilities from a third party), the immovable property subsequently acquired or used by the recipient must comprise 10% or less of the fair market value of all the property required to carry on the business, including the lease (see below for situations that may arise in the case of a lease).

In addition, the recipient must be capable of carrying on the same kind of business that was established or carried on by the supplier with the property that the recipient is acquiring under the agreement.

To summarize, the election is available, subject to exceptions, with respect to the sale of a business, or part of a business, as a going concern. The election is not meant to eliminate the GST and QST payable on individual assets supplied in situations not involving business acquisitions, regardless of the value of the assets.

Transfer of a business: Immovable supplied by way of lease

Where the immovable is supplied by way of lease, several situations may occur.

1. The supplier may provide the recipient with the remainder of the original lease. For example, if there are three years remaining on the lease, the parties to the sale must take the three-year lease into consideration when determining whether the recipient is acquiring all or substantially all of the prop-

erty that is necessary in order to carry on the business.

The length of the lease must be reasonable with regard to the type of business and the normal duration of leases for other businesses in the same sector of activity.

2. If the lease has expired and will not be renewed by the supplier or the recipient, the parties to the sale

must take into consideration the fair market value of the new lease concluded between the recipient and a third party when determining whether the recipient is acquiring all or substantially all of the property that is necessary in order to carry on the business.

3. If the lease has expired and the business will be transferred to an immovable belonging to the recip-

ient, the parties to the sale must take the value of the recipient's immovable into consideration when determining whether the recipient is acquiring all or substantially all of the property that is necessary in order to carry on the business.

If the newly acquired property is to be placed with other property already in the recipient's immovable, the recipient must determine the fair

market value (at the time of the sale) of the surface area of the immovable that can be reasonably be regarded as being used for the newly acquired property.



Recipient of a Taxable Supply and Entitlement to ITRs and ITCs

Where the invoice for a supply of property or services is drawn up in the name of one person, but the amount billed is paid by another person, which person is entitled to claim the input tax refund (ITR) and the input tax credit (ITC) with respect to the QST and GST paid or payable on the supply?

A registrant must be the **recipient** of the supply in order to claim the related ITR and ITC; as a rule, the recipient is the person liable for payment of the consideration for the property or service in question.

Example

Corporation A, whose activities are solely commercial, is a QST and GST registrant. The company orders material from a supplier. Under the agreement covering the transaction, Corporation A is liable for payment of the cost of the material. Corporation B, also a registrant, agrees to have the material delivered to its premises and uses the material exclusively in its commercial operations.

The invoice issued by the supplier identifies Corporation A as the customer, but indicates the address of Corporation B as the shipping address. On receipt of the order, Corporation B pays the supplier, and subsequently claims an ITR and ITC, submitting, in support of

its claim, the invoice issued in the name of Corporation A. However, as Corporation B is not the recipient of the material—that is, is not **liable** for payment of the cost of the material or the related consumption taxes—Corporation B is not entitled to the ITR or ITC.

In this case, Corporation A is the recipient, and is therefore entitled to the ITR and ITC. If the companies in question wish to have Corporation B claim the ITR and the ITC with respect to the material, Corporation A must **resupply** the material to Corporation B and issue an invoice in Corporation B's name (that is, identifying Corporation B as the recipient of the material). This allows Corporation B to claim an ITR and ITC with respect to the taxes paid or payable, provided the company holds the relevant supporting documents and meets the other criteria for entitlement.

Exception

Where an agent acting under an agreement between registrants acquires property or services on behalf of the principal, the principal (and not the agent*) is entitled to claim the ITRs and ITCs.

In this case, the agent and the principal have contracted to confer on the agent the power to represent the principal in legal transactions with a third party. This

agreement is called a "mandate." When the agent deals with a third person under the mandate, it is acting in the name of the principal.

Where a person is acting solely as an agent when it agrees to pay for a supply, the principal is the recipient of the supply and is liable for payment of the related taxes. The principal may claim an ITR and ITC, provided the other eligibility criteria are met.

There are specific documentary requirements for claiming ITRs or ITCs. For example, supplier invoices issued only in the agent's name are not acceptable, as they do not provide information making it possible to determine whether the principal is in fact the recipient of the property or services. This type of information may be contained in documents such as a contract or letter setting forth the terms of the mandate. Such documents are acceptable, provided their connection to the invoices is clear.

* In the Act respecting the Québec sales tax, the terms "mandator" and "mandatory" (rather than "principal" and "agent") are used.

Proposed Amendment to the Vocational Training Exemption

Courses and examinations supplied by educational institutions (secondary-level and college-level institutions, universities and vocational schools) leading to certificates, diplomas, licences, or similar documents, or classes or ratings in respect of licences, that attest to the competence of individuals to practise or perform a trade or vocation, are GST and QST exempt.

The existing exemption applies if one of the following conditions is met:

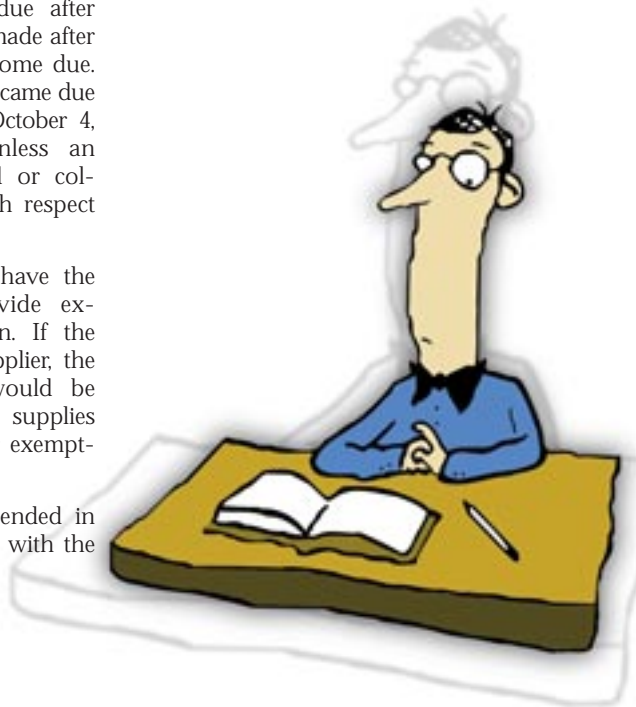
- The documents, classes or ratings are prescribed by a federal or provincial regulation.
- The supplier is subject to either federal or provincial regulations applicable to vocational schools.
- The supplier is a non-profit organization or a public institution.

Under federal legislation assented to on June 14, 2000, the above-mentioned conditions were repealed under the GST system as of October 4, 2000; in addition, the exemption was extended

to include similar educational services supplied by governments. Payment of the services must become due after October 4, 2000, or must be made after that date without having become due. Supplies for which payment became due or was made on or before October 4, 2000, are also exempt, unless an amount of tax was charged or collected during this period with respect to the supply.

Suppliers may elect not to have the training services they provide exempted under this provision. If the election were made by a supplier, the supplies described above would be taxable (assuming that the supplies were not covered by another exempting provision).

The QST system will be amended in the near future to harmonize with the GST system.



Designated Charities

Certain charities¹ may apply for designated charity status. For the charity to be eligible, one of its main purposes must be the provision of employment, training for employment, or employment placement services for individuals with disabilities, or the provision of instructional services to assist such individuals in securing employment. The charity must also supply, on a regular basis, services that are performed, in whole or in part, by individuals with disabilities.

Once the charity is designated, all the services it provides on a regular basis to GST and QST registrants will be taxable (except for the following), thereby enabling the charity to claim input tax

credits (ITCs) and input tax refunds (ITRs). In addition, a designated charity may elect to use the Special Quick Method for Public Service Bodies for calculating its net tax remittances (the Net Tax Calculation Method for Charities does not apply to designated charities).

However, the following services will remain exempt if they are rendered by a designated charity:

- services provided to individuals with disabilities which consist in the provision of care, employment, training for employment, employment placement services or instructional services, if the supply of the service is made to a public sector body or to a board,

commission or other body established by a government or municipality;

- services that are otherwise exempt, such as educational or health-care services.

1. As defined in the Excise Tax Act and the Act respecting the Québec sales tax



False Claims for GST and QST Exemptions

Agents should be aware that certain individuals are claiming exemptions illegally by presenting cards supposedly issued by Corporation Sole, International Humanity House or the Indigo Foundation of the Child, in an attempt to avoid paying GST and QST on their purchases.

Please note that these cards do not give entitlement to an exemption from the GST and the QST. Tax must therefore be collected on all transactions carried out by such cardholders. Agents who do not collect the GST and the QST from an individual falsely claiming to be

exempt from the GST and the QST are required to remit the tax that should have been collected.



Tax Refund on Fuel Used for Stationary Purposes

Since July 1, 1999, it has been possible to obtain a refund of the fuel tax paid on gasoline or non-coloured fuel oil used by the propulsion engine of a motor vehicle to operate the vehicle's auxiliary equipment by means of a power take-off. Equipment used for commercial or public purposes may qualify for a fuel tax refund.

Equipment covered by the measure

The refund may be claimed respecting equipment whose use or purpose does not require that the vehicle be moving. Power shovels, drilling machines, cranes, concrete mixers, tank trucks and garbage trucks may therefore give entitlement to a refund, whereas no refund may be claimed with respect to equipment such as bulldozers, graders, rotary mixers (soil stabilizers), compactors, scrapers, snow-grooming machines, snow ploughs, snowblowers or spreaders of melting agents or abrasives. Equipment used to drive the vehicle or add to the comfort of its occupants is also not covered by the refund measure.

Quantity of fuel giving entitlement to a refund

The quantity of fuel used for stationary purposes is determined using prescribed percentages, which vary according to the type of vehicle and whether the vehicle is designed primarily for road travel or off-road travel.



On-road vehicles

The prescribed percentages for vehicles designed mainly to travel on roads are as follows:

- 40%, for concrete pumping trucks and well-drills;
- 30%, for cement mixers, highway cranes, fire trucks, garbage and recycling trucks, and trucks for cleaning sewers and emptying septic tanks;
- 20%, for tank trucks equipped with a pump, trucks equipped with a blower system or auger for unloading, and trucks equipped with an aerial lift device, pneumatic drill, auger, loading arm or similar equipment.

Note: Vehicles such as dump trucks, moving trucks with a hydraulic platform, trucks equipped with a refrigeration system, carpet-cleaning trucks and tow trucks do not give entitlement to a refund, because only a small proportion of their fuel is used for stationary purposes.

Off-road vehicles

The prescribed percentages for vehicles (other than dump trucks) designed mainly for off-road travel are as follows:

- 70%, for vehicles that have eligible equipment only (for example, power shovels, drilling machines, and cranes other than highway cranes);
- 35%, for vehicles that have both eligible and non-eligible equipment, provided substantial use is made of the eligible equipment (for example, backhoe-loaders, and bulldozers or loaders equipped with a backhoe, pneumatic drill, auger, loading arm or similar equipment).

Broadening of the refund measure

When the refund measure came into effect, it applied only to vehicles that had a single engine used both to propel the vehicle and to operate equipment. However, it is now possible to claim the refund (using the prescribed percentages) with respect to vehicles whose tank supplies both a propulsion engine and an engine used to operate equipment.

This change applies retroactively to July 1, 1999. For further details see information bulletin 2000-10, published by the Ministère des Finances du Québec and available at www.finances.gouv.qc.ca.

Sales of Used Vehicles Between Related Individuals

In order to limit tax avoidance with respect to transactions involving the sale of used road vehicles, the QST system provides for rules to determine the minimum market value of such vehicles for the purpose of calculating the tax payable at the time of their sale. As a rule, the tax must be calculated on the higher of the following amounts: the agreed selling price or the average wholesale price indicated in certain reference books, minus \$500.

Used road vehicles supplied by way of a gift from one individual to another related individual are not subject to these rules, since it is likely in such cases that the transaction will be made free of charge.

The same exemption should also apply to used road vehicles sold by an individual to a related individual for a price lower than the minimum market value determined according to the above-mentioned rules. Consequently, under

the QST system, such sales are excluded from the application of the tax, provided the transaction is carried out on or after December 22, 2000.

This article is derived from information bulletin 2000-10 of the Ministère des Finances, which can be accessed on the Internet at the following address: www.finances.gouv.qc.ca.



Services for Businesses

BUSINESS WINDOWS . . . Now open!

Are you starting a business, or maybe already operating a business? You can use the **business window** at the office of the Ministère du Revenu in your area for answers to all of your tax questions.

Business windows provide information regarding income tax, consumption taxes and source deductions, as well as help in completing your tax forms, information concerning your tax file, and the opportunity to update your file.

A new publication for persons starting a business

If someone you know is looking for information about how the tax system applies to businesses, a new brochure published by the Ministère du Revenu, entitled *New Businesses and Taxation* (IN-307-V), should be useful.

The services available at each regional branch office of the Ministère are adapted to the needs of local businesses. These services may include, for example,

- a special information line for new businesses;
- visits (on request) to the place of business in order to assist new businesses during start-up;
- personalized telephone follow-up for new businesses;
- information sessions on tax-related matters.

The new publication is intended for small and medium-sized businesses. It briefly describes the various legal forms of business organization (sole proprietorship, partnership and corporation) and the tax rules applicable to each.

Most of the information provided is tax-related. The brochure explains, for example, how to register for the GST, the QST and source deductions, and provides information not only on fiscal obligations, but also on the tax credits, deductions, refunds and other benefits to which a business may be entitled. The publication outlines, as well, the

Contact the staff of the Ministère du Revenu at the business window in your area to find out more about the services provided.

Business windows—a great way to help you meet your tax obligations!



administrative procedures required by certain government departments and agencies in order to start a business.

New Businesses and Taxation is an excellent source of information for persons starting a new business.



Information Bulletins

The following information bulletins were issued by the Ministère des Finances between October 20, 2000, and April 12, 2001. For more details, you may consult the bulletins on the Web site of the Ministère des Finances at www.finances.gouv.qc.ca.

Bulletin 2000-6, October 20, 2000

Adjustments and clarification concerning certain fiscal development measures applicable to businesses

Bulletin 2000-7, October 27, 2000

Québec finance department's position regarding the federal economic statement of October 18, 2000

Bulletin 2000-8, November 17, 2000

New tax measures for Gaspé Peninsula and certain maritime regions in Québec

Bulletin 2000-9, November 17, 2000

Extension for an additional year of tax incentives relating to flow-through shares and streamlining of rules regarding associated corporations

Bulletin 2000-10, December 21, 2000

Adjustments to tax policy regarding businesses

Bulletin 2001-1, March 1, 2001

Application of the tax on lodging in the Québec tourist region and other fiscal measures

Bulletin 2001-2, April 5, 2001

Increase in the tax on tobacco products

Bulletin 2001-3, April 9, 2000

New tax measures to support Québec's financial sector

Bulletin 2001-4, April 12, 2001

Adjustments to the refundable tax credit for corporations established in Cité du commerce électronique

Bulletin 2001-5, June 13, 2001

Improved tax relief for the taxi industry

Bulletin 2001-6, July 5, 2001

Broadening of the tax credit for musical productions to dramatic performances and comedy shows and clarifications concerning the fiscal policy applicable to individuals and businesses

Bulletin 2001-7, August 21, 2001

Broadening to three RCMs of tax measures for the resource regions

Attention

Internet Users

A new Web site is now available!
www.travailaunoir.org

Surf to www.travailaunoir.org and learn all about the new program developed by the Gouvernement du Québec to fight tax evasion and the underground economy.

You will see the results of this program, which is part of the government's efforts to ensure equity for all taxpayers.

Be sure to bookmark the site, for ready access in the future!





In Your Interest

GST

Prescribed interest rates are adjusted quarterly to reflect market trends. Penalties and interest related to the GST are compounded daily. Annualized interest rates and penalty rates for the quarterly periods from October 1, 2000, to September 30, 2001, are listed below.

| Period | Annualized interest rate* % | Penalty rate % |
|-------------------|--------------------------------|-------------------|
| 2000 | | |
| Oct. 1 - Dec. 31 | 5.9674 | 6 |
| 2001 | | |
| Jan. 1 - Mar. 31 | 6.0833 | 6 |
| Apr. 1 - June 30 | 4.8132 | 6 |
| July 1 - Sept. 30 | 4.7609 | 6 |

* To calculate interest for the purposes of the GST, find the daily rate by dividing the annualized rate by 365.

Act respecting the Québec sales tax, and other specific statutes

Interest is capitalized daily on amounts due and refunds granted under Québec tax laws. The prescribed interest rate applicable to debts owed to the Ministère du Revenu is set by calculating the simple arithmetic mean of the base rates for bank loans to businesses, as published by the Bank of Canada on the last Wednesday of each month included in the three-month period ending in the second month of the preceding quarter (for example, November 24, 1999, is the last Wednesday of the second month in the quarter preceding the first quarter of 2000). The result is rounded off to the nearest whole number (one-half being rounded down), and increased by 3%.

Up to December 31, 1999, the interest rate applicable, for a particular calendar quarter, to refunds payable by the Ministère du Revenu was the rate for Québec savings bonds in effect on the first day of the third month of the preceding quarter, as published in the *Gazette officielle du Québec*.

As announced in information bulletin 99-5 published by the Ministère des Finances du Québec on November 26, 1999, amendments were made to the Regulation respecting fiscal administration with regard to the interest rate applicable to refunds payable by the Ministère du Revenu. The new rate, which applies to refunds payable by the Ministère as of January 1, 2000, corresponds to the rate in effect, with regard to the most recent issue of Québec savings bonds, on the first day of the third month of the quarter preceding the calendar quarter concerned. Thus, the interest rate for the quarter beginning on January 1, 2000, is the rate in effect on December 1, 1999, with regard to the issue of Québec savings bonds that was most recent on that date.

The following is a list of interest rates respecting refunds payable by and debts owed to the Ministère, for the quarterly periods from October 1, 2000, to September 30, 2001.

| 2000 | | Interest rate % |
|-------------------|---------|--------------------|
| Oct. 1 - Dec. 31 | Refunds | 4.75 |
| | Debts | 10 |
| 2001 | | |
| Jan. 1 - Mar. 31 | Refunds | 4.85 |
| | Debts | 10 |
| Apr. 1 - June 30 | Refunds | 4.85 |
| | Debts | 10 |
| July 1 - Sept. 30 | Refunds | 3.35 |
| | Debts | 10 |

The penalty rates are

- **7%** of the amount to be paid or remitted further to the application of a fiscal law, where the amount is no more than seven days late;
- **11%** of the amount to be paid or remitted further to the application of a fiscal law, where the amount is no more than 14 days late;
- **15%** in all other cases.

Tax News on the Internet

An electronic version of *Tax News* is available on the Web site of the Ministère du Revenu du Québec at

www.revenu.gouv.qc.ca. Simply click on the heading "Forms and publications," and then on "Tax News."



Between April and July 2001, the Ministère du Revenu du Québec published 33 interpretation bulletins, of which 19 deal with income tax and 14 with consumption taxes. The numbers and subjects of the bulletins are listed below (the letter R in a number indicates that the bulletin has been revised). Interpretation bulletins can be purchased from Les Publications du Québec, either individually (price varies according to the number of pages) or by subscription. For information about subscriptions or the availability of bulletins, call (418) 643-5150 or 1 800 463-2100.

Income tax

ADM.1.3/R6 List of the “Interprétation Revenu Québec” bulletins issued by the Ministère du Revenu from April 1, 2000 to March 31, 2001

IMP.134.2 The deductibility of expenses for meals and beverages consumed on the site of a golf club

LMR.28-/R50 Interest rates

RIE.11-1/R1 Real estate tax refund and “Corvée-Habitation”

SPECIAL 145 New tax measures to support Québec’s financial sector

SPECIAL 146 Adjustments to the refundable tax credit for corporations established in the Cité du commerce électronique

IMP.520.1-1 Disposition of property made after March 25, 1997, to which section 518 or the third paragraph of section 522 of the Taxation Act applies

IMP.522-1 Disposition of property to a taxable Canadian corporation made after March 25, 1997

RAMQ.34-4/R1 Québec health insurance plan contribution in respect of an allowance to a member of a municipal, supramunicipal or school body for expenses incident to his duties

IMP.1015-3/R2 Allowances paid to social aid recipients under the “On-the-Job Training Program”

IMP.1138-6/R1 Reduction of the paid-up capital - The notion of loan and related notions

RAMQ.34-3/R1 Allowances paid to social aid recipients under the “On-the-Job Training Program”

RRQ.50-4/R1 Allowances paid to social aid recipients under the “On-the-Job Training Program”

SPECIAL 147 Bill 138, An Act to amend the Taxation Act and other legislative provisions

SPECIAL 148 Improved tax relief for the taxi industry

ADM.6 Objections and client service, the decision-making process and due diligence

IMP.521.2-1 Disposition of property to a taxable Canadian corporation made after March 25, 1997 - General rollover rules

IMP.999.1-1/R1 Corporation that becomes or ceases to be exempt from tax

SPECIAL 149 Broadening of the tax credit for musical productions to dramatic performances and comedy shows and clarifications concerning the fiscal policy applicable to individuals and to businesses

Consumption taxes

ADM.1.3/R6 List of the “Interprétation Revenu Québec” bulletins issued by the Ministère du Revenu from April 1, 2000 to March 31, 2001

LMR.28-1/R50 Interest rates

SPECIAL 119 Increase in the tax on tobacco products

TVQ.327.2-1 Drop shipment certificate

TVQ.351-1 The elimination of tax rebates to foreign tourists

TVQ.1-7 Sale of a residential unit held in co-ownership and located in a resort centre

TVQ.17-1 Corporeal property brought into Québec

TVQ.457.1-1 Entertainment expenses

SPECIAL 120 Bill 138, An Act to amend the Taxation Act and other legislative provisions

TVQ.57-2 Reduction for prompt payment of the consideration for a supply

ADM.6 Objections and client service, the decision-making process and due diligence

SPECIAL 121 Broadening of the tax credit for musical productions to dramatic performances and comedy shows and clarifications concerning the fiscal policy applicable to individuals and to businesses

TVQ.51-3 Reduction in the consideration for a supply



New Publications

In recent months, the Ministère du Revenu has published several new documents, including:

- *Collection of Support: When the Debtor or Creditor Resides Outside Québec* (IN-904-V)

- *Support Payments and Last-Resort Financial Assistance* (IN-905-V)
- *Support Payments Bulletin* (IN-906-V)
- *Tax on Lodging* (IN-260-V)
- *Service Statement* (IN-310-V)

Tax News is published quarterly by the Direction des communications of the Ministère du Revenu du Québec. It is distributed to all GST and QST registrants, and is available to anyone else upon request. It offers information on the application of the GST and the HST, as well as other federal excise taxes and duties, and incorporates the contents of *GST/HST News*, a newsletter published by the Canada Customs and Revenue Agency (CCRA). All articles dealing with federal taxes have been approved by the CCRA and are identified by a maple leaf. *Tax News* also provides information on the administration of the QST and other Québec consumption taxes, as well as on the administration of Québec income tax.

This publication is distributed for information purposes only. The articles it contains do not replace the laws, regulations or administrative texts to which they refer. Nor do they supersede proposed amendments to laws or regulations, or constitute a legal interpretation of the Act respecting the Québec sales tax, the Excise Tax Act or any other Québec or federal statute.

Articles may be reproduced as long as the source is given.

Tax News est disponible en français sous le titre *Nouvelles fiscales*.

Suggestions and comments should be faxed to (418) 646-0167.

Subscription enquiries should be faxed to the number given above. Your fax should include all pertinent information, as well as a copy of the last page of *Tax News* (on which your address is printed).

If you are a QST or GST registrant, you receive *Tax News* at the address to which all correspondence concerning the administration of the taxes is sent. To make a change to your address, contact the office of the Ministère in your area.

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