

Tax News

Third quarter 2000

In Brief

Recognition of same-sex de facto spouses

The Act to amend various legislative provisions concerning de facto spouses (Bill 32) came into force on June 16, 1999. This legislation stems from a decision by the government of Québec to recognize the status of de facto spouses of the same sex.

This measure has numerous repercussions for the Ministère du Revenu du Québec, particularly in respect of the administration of the Taxation Act. Under this new legislation, same-sex de facto spouses are subject to the same tax rules, on or after June 16, 1999, as opposite-sex de facto spouses. Recognition of same-sex spouses may also affect the eligibility of the persons concerned for certain programs and refunds, such as the Home Buyers' Plan (HBP) and the QST rebate.

Generally speaking, the term "spouse" designates the person to whom you are married or the person (of the same sex or opposite sex) with whom you have been living in a conjugal relationship

for at least 12 consecutive months or who is the biological or adoptive parent of at least one of your children. The term may also refer to a person with whom you have been living in a conjugal relationship for less than 12 months, but with whom you had previously lived in such a relationship for at least 12 months (the 12-month period is considered to have been uninterrupted if you lived apart for a period of less than 90 days).

Sushi platters

The ever-growing popularity of sushi, the latest fashion in oriental cuisine, highlights the need to clarify its tax status. Sushi platters sold in supermarkets and fish markets are taxable, just like any other platter of prepared foods, such as frozen shrimp rings or cheese and cold-cut platters. Bon appétit!

Hot off the press!

We are pleased to announce the publication of a new brochure, entitled *Non-Profit Organizations and Taxation* (IN-305-V).

This brochure is intended for the proprietors, members and associates of non-profit organizations. It discusses the advantages of such organizations, as well as their obligations, particularly in matters of income tax, GST and QST, and source deductions.

Reimbursement of expenses to volunteers

Only charities and public institutions may claim input tax credits (ITCs), input tax refunds (ITRs) or rebates in respect of expenses they reimburse to volunteers. Please note that ITCs, ITRs and rebates are calculated as a percentage of the expenses reimbursed to the volunteer. If a charity or public institution reimburses only a portion of such expenses (or only the GST or QST paid in respect of such expenses), ITCs, ITRs and rebates must be prorated according to the percentage of the expenses actually reimbursed. This percentage applies to the amount of tax paid by the volunteer for property and services acquired in order to carry out the commercial activities of the charity or public institution.

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As you are no doubt aware, families that receive a family allowance from the Régie des rentes du Québec are eligible, under a measure that took effect on May 1, 2000, for financial assistance to enable them to access the Internet. The "Connecting Families to the Internet" Program provides assistance in the form of a discount offered by Internet service providers or computer equipment retailers on the monthly cost of Internet access or the rental or purchase of a computer. However, the new program raises certain questions: Does the financial assistance provided under the program constitute a subsidy to families? Does it affect the calculation of the GST and QST charged on the services and equipment supplied?

A subsidy to families

The program was instituted in order to allow all Québec families equal access to the information highway. To obtain Internet access or computer equipment, eligible families must deal with suppliers or retailers accredited by the Ministère de l'Industrie et du Commerce, and may receive assistance for up to two years.

Although the assistance takes the form of a discount offered by the supplier or retailer, it constitutes a subsidy to families, not to businesses. The program is designed in this way so as to provide assistance directly to eligible families,

unlike other types of government subsidies whose impact is less immediate. Under the program, the government reimburses accredited suppliers and retailers, on a monthly basis, for the discounts (that is, subsidies) that they grant to eligible families.

Registered suppliers and retailers

Suppliers of computer services and retailers of computer equipment wishing to participate in the program must apply to the Ministère de l'Industrie et du Commerce to obtain a registration number. Families can obtain a list of registered suppliers (also referred to as "accredited suppliers") by contacting the "Connecting Families to the Internet" call centre at (418) 643-8362 or, toll-free, at 1 888 793-9588. The list can also be consulted on the Web site of the Ministère de l'Industrie et du Commerce (www.familles.mic.gouv.qc.ca/familles/mnuFam.htm) by clicking on the heading "Lists of registered suppliers."

Calculation of taxes

As illustrated in the following examples, **Internet access services and computer equipment are subject to the GST and the QST**, and the taxes must be calculated before the application of the subsidy.

Internet access

| | |
|---|---------------|
| Monthly cost of Internet access | \$20.00 |
| GST | \$1.40 |
| Total | \$21.40 |
| QST | \$1.61 |
| Total | \$23.01 |
| Minus the government subsidy* | \$16.66 |
| Amount charged to the eligible family | \$6.35 |

*75% of the total monthly cost, to a maximum of \$16.66 per month (\$200 per year)

Rental of a computer

| | |
|---|---------------|
| Monthly cost of renting a computer | \$25.00 |
| GST | \$1.75 |
| Total | \$26.75 |
| QST | \$2.01 |
| Total | \$28.76 |
| Minus the government subsidy* | \$20.83 |
| Amount charged to the eligible family | \$7.93 |

*75% of the total monthly cost, to a maximum of \$250 per year

Purchase of a computer

| | |
|---|-----------------|
| Cost of purchasing a computer | \$1,000.00 |
| GST | \$70.00 |
| Total | \$1,070.00 |
| QST | \$80.25 |
| Total | \$1,150.25 |
| Minus the government subsidy* | \$500.00 |
| Amount charged to the eligible family | \$650.25 |

*75% of the total cost, to a maximum of \$500

Filing RL-1, RL-2 and RL-25 Slip Data on Magnetic Media

Did you know that, beginning with the 2000 taxation year, agents that issue 500 or more RL-1, RL-2 and RL-25 slips are required to submit their data on magnetic media?

If you are in this category, you must file your RL-slip data, no later than the last day of February, on one of the following types of magnetic media: diskette, CD-ROM, or 3480 or 3490 cartridge. At least two months prior to

doing so, however, you are required submit a test file in order to ensure that your data meets the filing requirements set forth in the *Guide for Filing Data on Magnetic Media: RL-1, RL-2, RL-3, RL-16 and RL-25 Slips* (IN-401-V), and to obtain authorization to file your 2000 data on magnetic media.

Information on filing data on magnetic media can be found on the Web site of the Ministère. Click on *Electronic services*

and then *Filing RL-slip data on magnetic media*. You may also write to Yvan-Denis Veilleux at the following address:

Groupe de promotion de l'EDI
et d'acquisition des données
électroniques
Direction générale du traitement
et des technologies
3800, rue de Marly, secteur 2-2-0
Sainte-Foy (Québec) G1X 4A5

Corporation Return

Approved software programs listed on Ministère du Revenu Web site



Corporations must submit a copy of their corporation return in prescribed form to the Ministère du Revenu within six months after the end of their fiscal period. While a tax calculation software program may be used to generate the return and related forms,* these documents must be filed in paper form.

The Ministère has approved new software programs for the June 2000 version of the return, which means that **users may no longer submit versions dating earlier than December 1998.**

List of authorized software

You may consult a list of the approved commercial software programs on the Ministère du Revenu Web site. Simply click on: Income tax/Corporations. You will find certain information pertaining to the software (for example, the names of the developers), restrictions noted by the Ministère with regard to the program, and requirements that must be met when generating the paper copy of the form. Information concerning requirements is also provided in the guide *Information for Software Users* (IN-417.A-V).

* The *Corporation Income Tax Return* (CO-17-V), *Keying Summary for the Corporation Income Tax Return* (COR-17.W-V) and *Keying Summary for Forms Related to the CO-17-V* (COR-17.X-V).

Employer Identification Number

We would like to clarify two points mentioned in the article that appeared under this same title on page 5 of the issue of *Tax News* for the first quarter of 2000.

The article stated that, in the case of an **amalgamation**, the resulting new corporation must apply to the Ministère du Revenu for a new employer identification number. However, it should also have specified that this obligation does **not** apply in all cases—in that of a short-form amalgamation, for example.

In the case of the **death of a member of a partnership, or the arrival or departure of a partner**, the new owner need not apply for a new employer identification number if the business is sold or transferred to a family member.

When Small Businesses Become Large

Registrants that are large businesses are subject to certain restrictions regarding the input tax refunds (ITRs) they may claim (see the list of restrictions below). To find out if these restrictions apply to your business, you must examine your status at the end of each fiscal year. The following definitions will help you determine whether your business is a small or medium-sized business (SMB) or a large business.

SMB

A registrant is generally considered to be an SMB throughout a given fiscal year if the value of the taxable (including zero-rated) property and services, other than financial services, supplied in Canada by the registrant and the registrant's associates did not exceed \$10 million (\$6 million, prior to July 1, 1999) during the fiscal year that immediately preceded the given fiscal year.

Large business

A registrant is therefore considered to be a large business throughout a given fiscal year if the value of the taxable (including zero-rated) property and services, other than financial services, supplied in Canada by the registrant and the registrant's associates exceeded \$10 million (\$6 million, prior to July 1, 1999) during the fiscal year that immediately preceded the given fiscal year.

Restrictions on ITRs for large businesses

The following property and services do not give entitlement to an ITR:

- road vehicles (weighing less than 3000 kilograms) that must be registered under the Highway Safety Code to be driven on public roads;
- fuel used in such vehicles, with the exception of non-coloured fuel oil (also called clear diesel fuel) acquired by a large business;
- electricity, gas, steam or combustibles, except when used to produce movable property intended for sale;
- telephone services and other telecommunications services, with the exception of "1 800" services, "1 877" services and "1 888" services, and Internet services that constitute telecommunications services;
- food, beverages and entertainment that are 50% deductible under the Taxation Act.

Averaging of a Retroactive Payment

Individuals who, in a taxation year, receive retroactive payments that relate in whole or in part to a previous taxation year, may request a tax adjustment in their income tax return.

Similarly, individuals who receive retroactive payments which, in the opinion of the Minister of Revenue, would create an undue additional tax burden if the amounts were included in the calculation of the individuals' income for the year may ask the Ministère to determine whether it is to their advantage to exclude from their taxable income for the year in which they receive the payments the portion that applies to previous years (provided the portion is at least \$300).

Individuals who wish to exercise this option must check box 404 of their income tax return and complete form TP-766.2-V, *Averaging of a Retroactive Payment for Support-Payment Arrears*.

Interest on a retroactive payment

Interest received in relation to a retroactive payment is, like any other interest, subject to income tax and must be included on line 130 of the income tax return. However, a tax adjustment may be requested in this respect.

Adjustment under the simplified tax system

Individuals for whom the simplified tax system is more advantageous may now request a tax adjustment when they complete the simplified return (previously, an adjustment was possible only under the general tax system).

Measures concerning Individuals

Improvement of the refundable tax credit respecting home-support services for seniors



Since January 1, 2000, persons 70 or older have been entitled, under certain conditions, to claim the refundable tax credit respecting home-support services for seniors.

Essentially, this tax credit is designed to support seniors who choose to stay in their own homes as long as possible, by providing them with tax assistance equal to 23% of the eligible expenses they incur for home-support services, up to a maximum of \$2,760 per year.

Household services supplied regarding a room

The home-support services that give entitlement to the tax credit are divided into two categories: **direct personal services and household services.**

The household-services category includes household maintenance, care of clothing, and supplies of day-to-day necessities, as well as light work outside the home.

Under existing rules, household services give entitlement to the tax credit only if they are supplied regarding a dwelling that is a self-contained domestic establishment owned, rented or sublet by the senior (or his or her spouse), or regarding the land on which such a dwelling is located. This requirement does not exist for direct personal services.

For the purposes of this tax credit, the expression "self-contained domestic establishment" means a house, apartment or similar place in which a person ordinarily eats and sleeps. In this regard, the Ministère du Revenu du Québec generally considers that a self-contained domestic establishment must have kitchen and bathroom facilities. A room in a hotel or rooming house therefore does not, as a general rule, constitute a self-contained domestic establishment.

However, for various reasons, many seniors occupy a room located in a senior citizens' residence where they receive meal services as well as various household services, including household maintenance and care of clothing. Other seniors prefer to live in a room in a hotel establishment or rooming house that they rent for a long period.

Measures concerning ...

In most cases, such rooms cannot be considered self-contained domestic establishments because they do not have a place in which to prepare meals or, in some cases, a private bathroom. Consequently, the household services supplied in their regard do not give entitlement to the tax credit, while direct personal services supplied to a senior living in such a room generally do.

The refundable tax credit respecting home-support services for seniors has therefore been changed to enable seniors who live in a room in a senior citizens' residence or whose principal residence is a room in a hotel establishment or rooming house to fully benefit from the tax credit.

Eligible rooms

More specifically, household services supplied in regard to **the following may now give entitlement to the tax credit:**

- a room that a senior (or his or her spouse) rents or sublets in a senior citizens' residence, that is, in a group residence of housing units or rooms, offering a more or less broad range of services and constituting the senior's principal residence; or
- a room in a hotel establishment or rooming house that is rented by a senior (or his or her spouse) for a period of at least 60 consecutive days, provided the room is the senior's principal residence.

Non-eligible rooms

However, household services supplied with regard to any of the following rooms **do not give entitlement to the tax credit** as a result of this change:

- a room located in a hospital centre, a residential and long-term care centre or a rehabilitation centre governed by the Act respecting health services and social services, or a room located in a hospital centre or reception centre that is a public institution for the purposes

of the Act respecting health services and social services for Cree Native persons or that has concluded a contract or an agreement in accordance with section 176 or 177 of the Act;

- a room occupied by a senior under the care of a person recognized as a foster home under the Act respecting health services and social services or of a foster family covered by the Act respecting health services and social services for Cree Native persons;
- a room located in a self-contained domestic establishment maintained by an individual who claims (or whose spouse claims) the tax credit respecting the housing of a parent with regard to the senior occupying the room.

This change applies regarding household services paid for after June 29, 2000.

Easing of the requirement concerning separate billing of eligible services

Under existing rules, where a person carrying on a business supplies a senior not only with eligible home-support services, but also with other types of services or goods, the cost attributable to the eligible home-support services to be paid by the senior must be billed separately from the cost relating to the other services or goods supplied, in order for the cost to constitute an eligible expense.

For instance, the cost that may reasonably be attributed to the delivery of a meal-preparation service may constitute an eligible expense, provided it is billed separately from the cost of the food.

Similarly, the portion of rent paid by a senior living in a dwelling located in a rental building and that is attributable to eligible home-support services may constitute an eligible expense, provided this portion of the rent is billed separately.

This separate-billing requirement seems too restrictive in the circumstances, since it involves producing a separate bill for eligible home-support services. However, if the supplier were simply to itemize the services billed, the intended result would be achieved, namely, the identification of the amount payable that is attributable to eligible services.

Consequently, **a change has been made** to the application rules of the tax credit, and **the requirement for separate billing has been replaced with a more flexible requirement.**

Itemization of costs rather than separate billing

Accordingly, when an amount is payable by a senior as consideration for both eligible home-support services and other types of services or goods supplied by a person carrying on a business, the portion of the amount attributable to the eligible home-support services may constitute an eligible expense, **provided that the respective value of each of these services is specifically indicated in writing by the person carrying on a business, and that the value is reasonable.** For instance, when the total amount payable represents an amount of rent, the landlord may provide a written indication of the value of eligible services in an appendix to the lease.

This change applies as of the 2000 taxation year.

Suspension of Recovery Measures in the Case of an Objection

With the adoption in June 2000 of the Act to amend the Act respecting the Ministère du Revenu as regards the suspension of recovery measures, Québec's tax system has been modified to empower the Minister of Revenue to suspend recovery measures in cases where a taxpayer files an objection to an assessment, or an appeal or a summary appeal. (Please note that these new provisions apply in respect of income tax only; they do not apply to source deductions or consumption taxes.)

Naturally, the Ministère du Revenu has had to modify certain of its procedures in the wake of this amendment. For example, the Ministère may no longer undertake recovery measures or register a legal hypothec within 90 days following the mailing of a notice of assessment. Furthermore, the Ministère is prohibited from taking such measures in respect of the amount in dispute where the taxpayer in question has filed an objection to a notice of assessment, or within 90 days following the mailing of a decision by the Minister respecting such an objection. Recovery measures are also suspended if the taxpayer appeals the Minister's decision,

until such time as the dispute is settled by a judgment of the court.

However, in the case of a large corporation (see the article on page 3 for more information), the Ministère may undertake recovery measures at any time in respect of one-half of the balance owed further to an assessment, up to 90 days following the mailing of the notice of assessment. After the 90-day period expires, the Ministère may require payment of the entire balance owed further to the assessment, minus 50% of any amount in dispute.

Refund of an amount in dispute

If the Ministère fails to respond to a notice of objection within 120 days following the date on which the notice is filed, the taxpayer concerned may apply for a refund of the portion of the payments made that pertains to the amount in dispute or of the security given in respect of the amount, without having to file an appeal before the court. Similarly, a taxpayer, when filing an appeal from the Minister's decision, may simultaneously apply to the Ministère for a refund of the amount

in dispute paid (or portion of the amount paid) or of the security given in respect of the amount. In the case of a large corporation, the refund is limited to one-half of the amount in dispute.

What about interest?

The suspension of recovery measures described above does not apply to interest. All amounts assessed continue to bear interest at the prescribed rate.

Measures to prevent abuse

Notwithstanding these new provisions, the Ministère may, if authorized by the court, undertake recovery measures or refuse to refund an amount in dispute or the security given in respect of the amount, if the Minister is of the opinion that the eventual recovery of the amount in dispute might otherwise be jeopardized.

These new provisions of the Act to amend the Act respecting the Ministère du Revenu as regards the suspension of recovery measures will be brought into force by an order in council of the government.

Increase in the Premium Payable under the Québec Prescription Drug Insurance Plan

Under amendments made to the Act respecting prescription drug insurance and the Act respecting the Régie de l'assurance maladie du Québec, the premium payable under the Québec prescription drug insurance plan has been increased from \$175 to \$350 beginning in 2000. Taxpayers will be required to take the increase into account when completing their 2000 income tax returns.

The purpose of the Québec prescription drug insurance plan is to provide Quebecers with basic drug insurance coverage, and individuals who are covered under the plan must pay the

related premium each year. The amount of the premium payable is calculated in Schedule K of the income tax return.

2000 is a transition year, as the increase took effect only as of July 1. The premium for 2000 is therefore equal to 1/12 of \$175 for the months of January through June, and 1/12 of \$350 for the

months of July through December. The total premium payable by an individual for 2000 may not exceed \$262.50.

Beginning in 2001, the premium will be equal to 1/12 of \$350 for each month of the year in which the individual is covered under the plan. However, the annual premium payable will not exceed 4% (2%, in the case of an individual with an eligible spouse) of the first \$5,000 of family income, and will be equal to 6% (3%, in the case of an individual with an eligible spouse) of the family income exceeding \$5,000, to a maximum of \$350.



As a rule, medical devices¹ intended for consumers, health-care institutions and health-care professionals are **taxable**. However, certain devices may be **zero-rated** if they meet specific conditions.

Hospital beds, for example, are zero-rated if supplied to health-care institutions or on prescription to incapacitated persons. Orthotic or othopedic devices (such as cradle arm slings, cervical collars, knee braces and spinal braces) are also zero-rated if sold under prescription for the exclusive use of the person named in the prescription (even if he or she is not the person who purchases them) or are made to order for a particular person.

The following devices and articles are zero-rated as well, if supplied on prescription:

- heart-monitoring devices;
- devices for treating asthma (metered dose inhalers, aerosol chambers);
- devices designed to convert sound into light signals, for the use of persons with a hearing impairment.

Certain devices and articles are zero-rated if they are specially designed for persons with a disability or an impairment. These include

- patient lifters for disabled persons (see our article on page 10);
- communication devices to assist persons in coping with a vision, hearing or speech impairment; and
- artificial breathing apparatus for persons with a respiratory disorder.

Other devices are zero-rated if they can be used in a person's residence (respiratory monitors, tracheostomy supplies and dialysis machines, for example).

Certain devices and articles are **zero-rated at all times, unconditionally**, regardless of whether they are acquired by a consumer, a health-care institution or a health-care professional. The following are examples:

- hearing aids;
- orthodontic appliances;
- medical or surgical prostheses;
- blood-glucose meters or monitors.

Medical devices for health-care institutions and professionals

As a rule, medical devices intended exclusively for use by health-care institutions and professionals are **taxable**. For example, highly specialized medical equipment, surgical instruments, examining tables and stethoscopes are subject to GST and QST.

Suppliers generally collect GST and QST on medical equipment and various articles, regardless of the type of institution (hospital, medical or dental clinic, residential centre for seniors) or category of professional (physician, dentist) that acquires them.

As public service bodies, hospital authorities are entitled to a rebate, or partial refund, of the GST (83%) and QST (60%) they pay on such equipment. This provision does not apply to medical or dental clinics or private residential centres.



Services related to medical devices

The numerous services related to medical devices are taxable or zero-rated, in accordance with the tax status of the device in question.

Drugs and biologicals

As a rule, drugs and biologicals considered to be drugs and intended for human use are **taxable**. However, some are **zero-rated** if they meet one of the following criteria:

- They are federally controlled.
- They are dispensed by a medical practitioner to an individual or on the prescription of a medical practitioner.
- They are authorized for use in emergency treatment.

Such zero-rated drugs and biologicals include blood, blood derivatives, insulin, monoclonal antibodies and immunizing agents.

Dispensing services

Only pharmacists are authorized to dispense drugs at retail and they normally charge dispensing fees for this service. Dispensing services are zero-rated only when supplied in conjunction with the sale of zero-rated prescription drugs.

For more on this topic, consult the brochure entitled *The QST and the GST/HST: How They Apply to Medical Devices and Drugs* (IN-211-V).

1. For the purposes of this article, the term "medical devices" includes assistive devices.

This article discusses the tax treatment of amounts paid as compensation for damages that one person has caused another person to suffer (or allegedly suffer).

Damage payment

A damage payment is not subject to GST or QST, as it is not a payment for a supply of property or services, even if the payee agrees to release the payer from further liability. A damage payment is the payment of an amount of money from one person to another as compensation or indemnification for damages that the first person has caused the second person to suffer (or allegedly suffer).

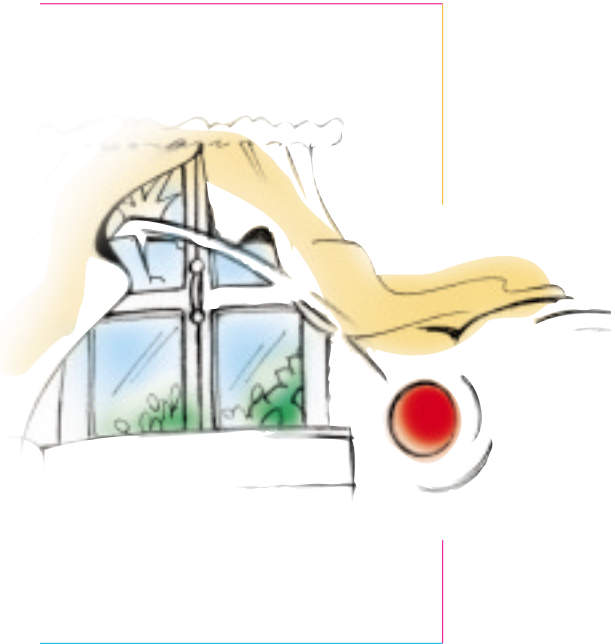
The nature of damages

Damages may be compensatory or punitive in nature and are generally awarded only if compensatory or actual damages have been sustained. Nominal damages are awarded where no real loss or injury can be proved.

Damages may arise in tort and similar causes of action, but will also include damages arising out of contractual relationships, as well as those arising out of quasi contracts, legislation or another obligation. The payments may be made pursuant to a court award or an out-of-court settlement.

Compensation

A distinction must also be drawn between those cases where one person compensates another by payment of money and those where the person contracts with a third party to repair the damage. If, for example, a person breaks someone else's window and contracts with a third party to repair the window, the third party is providing a taxable service to the person by repairing the window. As the person who broke the window is liable for the payment under the agreement with the third party, that person is the recipient of the service. The third party, if a registrant, would collect tax from the person.



Example 1

Corporation A, a registrant, contracted with Corporation B, also a registrant, whereby Corporation B would design and install a new software program for implementation by a certain date. As the deadline date approached, it became obvious that Corporation B would not be able to fulfil its obligations under the contract. Corporation A incurred additional expenses as a result of the non-delivery of the new software program. Pursuant to negotiations, Corporation A agreed to release Corporation B from the contract in exchange for a sum of money.

The payment by Corporation B to Corporation A is not subject to GST/HST, as it is not consideration for a taxable supply. In essence compensatory, it is not made in exchange for a supply of property or services by the other party.

Example 2

Ms. A lost control of her vehicle and smashed into the display window of a business establishment (B Ltd.), a registrant. B Ltd. performed the necessary repairs and demanded compensation from Ms. A in the amount of the cost incurred to repair the damaged window. Ms. A refused to reimburse B Ltd., which then commenced legal action against Ms. A to obtain payment. In an out-of-court settlement, Ms. A made a payment to B Ltd. in the amount of the cost incurred to repair the damaged window. B Ltd. accepted the payment in full satisfaction of its claim against Ms. A and released Ms. A from any further liability.

The payment by Ms. A to B Ltd. is not subject to GST/HST, as it is not consideration for a taxable supply. In essence compensatory, it is not made in exchange for a supply of property or services by the other party.



GST Rebate respecting Printed Books

The following persons are entitled to a rebate of the GST they pay on acquiring printed books, provided the books are not purchased for resale:

- municipalities;
- school authorities;
- universities;
- organizations that operate a post-secondary college or post-secondary technical institute that receives from a government or municipality funds intended to assist the organizations in the ongoing provision of educational services to the general public, and whose primary purpose is to provide programs of instruction in vocational, technical or general education;

- charities, public institutions and qualifying non-profit organizations* that operate a public lending library;
- prescribed charities and qualifying non-profit organizations* whose primary purpose is the promotion of literacy.

* Non-profit organizations qualify if their percentage of government funding for the year is 40% or more.

The following qualify as “printed books”:

- a printed book or an update of such a book. Newspapers are excluded from this category, as are guidebooks; brochures and pam-

phlets; books designed primarily for writing in; programs relating to an event or performance; and magazines and periodicals acquired otherwise than by way of subscription, as well as those in which more than 5% of the total printed space is devoted to advertising; etc.;

- an audio recording, all or substantially all of which is a spoken reading of a printed book;
- a bound or unbound printed version of scripture of any religion.

To obtain this rebate, organizations must submit an application within four years following the end of the application period in which the GST became payable.



Property Acquired by an Insurer as Part of a Claim Settlement

Sometimes, as part of a claim settlement, an insurer acquires ownership of the property to which the claim pertains. When movable property is acquired in this way and is subsequently sold by an insurer that is registered for the GST and QST, the insurer must collect GST and QST on the sale. However, the insurer may, as a rule, claim an input tax credit (ITC) and an input tax refund (ITR) with respect to the property if the previous owner was not entitled to do so.

There is nevertheless an exception to this rule under the QST system: an insurer cannot claim an ITR with respect to a **road vehicle** acquired under a claim settlement if the vehicle must be registered under the Highway Safety Code.

Nor can an insurer claim ITCs or ITRs on replacement property and repair services acquired at the time an insured's claim is settled.

The examples opposite illustrate these rules.

Example 1

Following an accident, an insured's vehicle is declared a total loss. The insured, an individual who is not registered for the GST and QST, transfers ownership of the vehicle to the insurer in return for an indemnity.

The insurer subsequently sells the vehicle to an auto parts business for \$1,000 and collects \$70 GST and \$80.25 QST. In this case, the insurer may claim an ITC equal to \$70 but is not entitled to an ITR because the vehicle is a road vehicle that must be registered under the Highway Safety Code, even though it is considered to be a total loss.

Example 2

Ms. Smith is fit to be tied: her daughter has brought home a new friend and the new friend's cat, which has decided to sharpen its claws on one of the cushions of her Italian leather loveseat. In despair, she calls her insurance broker, who takes the cushion and tells her not to worry, as he will fix everything. He sends the cushion to an upholsterer for repairs. In this case, the insurer cannot claim ITCs or ITRs for the GST and QST paid.

Transactions Between Closely Related Corporations

Specified members of a closely related group of corporations may, under certain conditions, elect to have the qualifying supplies they make to one another treated as if they were made for nil consideration. The purpose of this election is to simplify tax accounting: the corporations avoid paying GST and QST on property and services respecting which they are entitled to input tax credits (ITCs) and input tax refunds (ITRs). However, to make the election, the corporations must be **closely related**, and not merely **associated**.

Corporations are considered to be closely related if, for example, one of the corporations owns substantially all of the capital stock with full voting

rights of the other (that is, it owns at least 90% of the value and number of issued and outstanding shares with full voting rights of the capital stock of the other corporation).

Association between two corporations, on the other hand, is determined on the basis of corporate control. Generally, two corporations are associated with one another if they are associated corporations within the meaning of subsections 256(1) through (6) of the Income Tax Act (for purposes of the GST), and sections 21.4 and 21.20 through 21.25 of the Taxation Act (for purposes of the QST). It is important to note that associated corporations are not necessarily closely related.

Tax that Bar!

Most charitable and non-profit organizations conduct fund-raising activities and campaigns in order to finance their operations and ensure the continuation of their activities. To generate funds, many arrange for door-to-door sales of consumer goods, including bars of chocolate labelled as "fondue chocolate."

Fondue chocolate is a basic food item and, as such, is zero-rated. It is normally displayed in the bakery section of the grocery store, in bars of 170 grams or more that are intended for use in the preparation of food.

The kind of chocolate that is sold door-to-door in fund-raising activities, however, generally comes in bars weighing approximately 100 grams. It is not wrapped in the same way as fondue chocolate and may be eaten without being cooked or heated.



Many consumers are unaware that this kind of chocolate is taxable, as it is considered to be **confectionery chocolate**, sold as candy. (Confectionery chocolate bars are often found with other taxable snack foods in food stores.)

Any organization acquiring bars of chocolate of this kind for resale must pay GST and QST to the supplier.

Lifts Are Sometimes Considered Zero-Rated Devices

Greater care has been taken in recent years to make buildings more accessible to persons with a disability or an impairment. Some of the devices installed for this purpose are zero-rated if they are specially designed for these persons. Parts and accessories specially designed for these devices are also zero-rated. For example, the following types of lifts are zero-rated:

- enclosed or unenclosed vertical platform lifts;
- stair chair lifts;
- enclosed or unenclosed stair platform lifts.

However, not all lifts are zero-rated. The following types of lifts (and the parts used for their installation) are taxable:

- passenger elevators;
- freight elevators;
- freight platform lifts.

Labour, parts and accessories

Labour costs are zero-rated when they are incurred for the installation and maintenance of a lift specially designed for persons with a disability or an impairment; the same is true of the parts and accessories used in these lifts. It should be noted, however, that parts for general use and parts adapted for conventional elevators are subject to the GST and the QST.

For further information concerning industry standards, consult CSA Standard CAN/CSA-B-355-M86, prepared by the Canadian Standards Association.



The Concept of Use in Commercial Activities

As a rule, persons other than small suppliers that carry on commercial activities are required to register for the GST and the QST. They must also collect and remit the GST and QST payable on property they sell or services they render in the course of their commercial activities, if the property or services in question are taxable and not zero-rated. Furthermore, registrants may claim input tax credits (ITCs) and input tax refunds (ITRs) in order to recover the GST and QST that they paid (or that became payable) on property and services acquired in order to carry on their commercial activities. Such credits may be **full** or **partial**, depending on whether the property or services in question are used, consumed or supplied **exclusively** or **partially** for the purpose of carrying on commercial activities.

The term “exclusively” means “all or substantially all,” that is, 90% or more. Consequently, registrants that acquire property or services to be used in a proportion of 90% or more in the course of their commercial activities may claim a full refund of the GST and QST paid. Financial institutions, however, may claim a full ITC only if the expenses pertain to property or service to be used 100% in the course of their commercial activities.

Registrants wishing to claim ITCs in respect of expenses that cannot be attributed to a specific use must evaluate the percentage of those expenses attributable to their commercial activities. The method chosen to determine the percentage must be used for at least one fiscal year.

Special rules exist for ITCs and ITRs claimed in respect of capital property. The table opposite illustrates the application of these rules. (Note that the rules apply somewhat differently in the case of passenger vehicles and aircraft owned by partnerships and individuals that are registrants.)

ITCs and ITRs respecting capital property

| | Percentage of use in commercial activities | All registrants ¹ | Individuals who are registrants ² | Public service body |
|--|--|------------------------------|--|---------------------|
| Corporeal movable property | ≤ 50% | None | None | None |
| | > 50% | 100% | 100% | 100% |
| Immovables | ≤ 10% | None | None | None |
| | > 10% à ≤ 50% | % of use | % of use ³ | None ⁴ |
| | > 50% à < 90% | % of use | % of use | 100% ⁴ |
| | ≥ 90% | 100% | 100% | 100% |
| Passenger vehicles and aircraft⁵ | ≤ 10% | None | None | None |
| | > 10% à ≤ 50% | None | Based on CCA ⁶ | None |
| | > 50% à < 90% | 100% | Based on CCA ⁶ | 100% |
| | ≥ 90% | 100% | 100% | 100% |

If the percentage of commercial use of an immovable or of movable property is increased, an additional ITC or ITR may be claimed. On the other hand, if the percentage of commercial use is reduced, the registrant may be required to refund a portion of the ITC or ITR already claimed.

Examples

You purchase a building. You intend to use 60% of the building in your commercial activities. You may therefore claim an ITC equal to 60% of the GST paid and an ITR equal to 60% of the QST paid.

| | | |
|------------------------------|-------|-----------|
| Cost of building | ..... | \$500,000 |
| GST (7% x \$500,000) | ..... | \$35,000 |
| QST (7.5% x \$535,000) | ..... | \$40,125 |
| ITC claimed (\$35,000 x 60%) | ..... | \$21,000 |
| ITR claimed (\$40,125 x 60%) | ..... | \$24,075 |

You purchase furniture for your business that you intend to use 60% of the time in your commercial activities. You may therefore claim an ITC equal to 100% of the GST paid and an ITR equal to 100% of the QST paid.

| | | |
|----------------------|-------|---------|
| Cost of furniture | ..... | \$4,000 |
| GST (7% x \$4,000) | ..... | \$280 |
| QST (7.5% x \$4,280) | ..... | \$321 |
| ITC claimed | ..... | \$280 |
| ITR claimed | ..... | \$321 |

- Under the GST system, financial institutions may claim ITCs based on the percentage of the property's use in commercial activities. Under the QST system, the rules respecting all registrants apply.
- With respect to purchases of passenger vehicles and aircraft, partnerships follow the rules that apply to individuals.
- Individuals may not claim ITCs or ITRs if the percentage of use of the capital property for personal purposes is higher than 50%.
- A public service body may elect to have the rules respecting all registrants apply.
- The portion of the cost of passenger vehicles and aircraft giving entitlement to ITCs and ITRs is limited to the capital cost allowance (CCA) threshold for income tax purposes. Restrictions apply to large businesses in respect of ITRs for road vehicles that weigh more than 3,000 kg and must be registered under the Highway Safety Code.
- ITC = CCA x 7/107 for GST purposes. If the passenger vehicle or aircraft is used both in the course of commercial activities and for making exempt supplies, only the portion of the CCA attributable to commercial activities may be used to calculate ITCs.

Elimination of the Québec Sales Tax Rebate for Visitors

Under the Québec sales tax rebate program for visitors, non-residents of Canada may claim a rebate equal to the QST paid on certain purchases. Such purchases include short-term accommodations, certain property acquired to be taken or shipped outside of Québec, and supplies relating to a foreign convention. However, as of October 1, 2000, non-residents of Canada will no longer be entitled to a QST rebate respecting eligible property that is acquired to be taken or shipped outside Québec if the total payment for the property becomes due after September 30, 2000, and is not paid by that date.

Short-term accommodations and tour packages

Similarly, as of November 1, 2001, short-term accommodations for occupation by individuals who are non-residents of Canada will no longer give entitlement to a QST rebate. This amendment will apply both to individuals who acquire the accommodations for their own purposes and to non-registrant foreign suppliers who acquire the accommodations directly or as part of tour packages for supply outside Canada to non-residents, if the total payment becomes due after October 31, 2001, and is not paid by that date. The measure also applies to short-term accommodations or to

tour packages that include such accommodations for which all or part of the payment becomes due or is paid before November 1, 2001, if all the short-term accommodations made available in the course of such supplies are to be occupied after October 31, 2001.

Bolstering the promotion and development of tourism

The government plans to take \$25 million annually of the revenue stemming from the elimination of this program and to allocate the amount directly to Tourisme Québec, to be used to bolster international tourism promotion and development.



Reminder for Farmers and Agri-Businesses

Most supplies of agricultural products are zero-rated for GST and QST purposes; zero-rated supplies include fruits, vegetables, grains and most livestock when they are produced for human consumption or used to produce food for human consumption.



Taxable property and services

However, certain agricultural products and services are taxable, including the following:

- **Seeds and grains**
 - canary seed
 - bird-grade sunflower seed
 - grain or seed mixtures prepared for use as wild bird food or as pet food
 - other seeds and grains not normally sold for human consumption or as feed for livestock raised for human consumption
 - lawn seed
 - flower seeds
 - small packets of garden seeds
- **Animals and poultry**
 - fur-bearing animals such as fox and mink, as well as rabbits when sold to consumers as pets
 - horses, donkeys and mules
 - pigeons and peacocks
- **Agricultural services**
 - custom combining and seeding
 - feedlot services not including feed
 - transportation fees
 - storage fees
- **Agricultural property**
 - tractors that have a rating of less than 44.74 kW at power takeoff (60 PTO h.p.)
 - generators
 - snowblowers
 - plows with two furrows or less
 - harrows with an operational width of less than 2.44 m (8 feet)

If you are a producer or distributor of taxable products or services, you must charge GST and QST on the sales, unless you are a small supplier and you have not registered voluntarily. If you and your customer are registrants, the customer is entitled to input tax credits (ITCs) and input tax refunds (ITRs) in respect of the GST and QST paid on goods and services acquired for use in the course of commercial activities.

A new export distribution centre (EDC) program and the new residential rental property rebate were introduced in the Federal Budget Speech of February 28, 2000.

Export distribution centre program

Under the export distribution centre (EDC) program, proposed to begin on January 1, 2001, authorized export-oriented businesses will be able to use a certificate to acquire or import most inventory and parts, or to import a customer's goods for processing, without paying the GST.

Only GST registrants whose export revenue accounts for at least 90% of their total revenue generated from activities in Canada, and that add only limited value to goods, may participate in the EDC program. Eligible registrants who want to use the EDC program must apply to the Canada Customs and Revenue Agency (CCRA) for authorization. Authorizations will remain in effect for three years, unless revoked earlier; they can be subsequently renewed.

To complement the EDC program, the Federal Budget also proposed the following changes to existing measures:

- GST relief will be extended to goods imported for warranty repair where replacement goods are exported in place of the original defective goods.
- Storage services will be considered eligible under the drop-shipment rules, and the exporters of processing services program will be expanded to provide for storage and distribution activities.

More information on these topics can be found in the GST/HST guide RC4027, *Doing Business in Canada – GST/HST Information for Non-Residents*, which can be found on the CCRA Web site at the following address: www.ccr-a-adrc.gc.ca/tax/business/gstguides/rc4027/4027_1-e.html.

Please note that on June 29, 2000, the Québec Minister of Finance announced in information bulletin 2000-4 that Québec would bring in new measures concerning export distribution centres and export trading houses. Further information on this subject will be provided in a later issue of *Tax News*.

Other changes

Changes will be made to the export trading house program in order to render certain rules more compatible with those of the new EDC program. Information concerning export trading houses can be found in GST/HST Memorandum 4.5.2, *Exports – Tangible Personal Property*, at the following address: www.ccr-a-adrc.gc.ca/E/pub/gm/4-5-2em/README.html.

As well, the customs branch has announced administrative streamlining of the duty deferral program. **Contact a customs border services office for more information regarding this program.**

New residential rental property rebate

The Budget also introduced a new residential rental property rebate, generally equal to a maximum of 36% of the GST and QST paid on newly-constructed, substantially renovated, or converted residential rental accommodation. In the participating provinces this rebate applies only to the federal portion of the HST. This rebate is available in respect of rental accommodations, additions to multiple-unit rental housing, and land leased for residential purposes, provided that each accommodation in respect of which the rebate is granted will be used as a primary residence on a long-term basis (one year). In the case of land leased for residential purposes, the rebate is granted if one or more residential units are built on the land and the units are used as a primary residence. The rebate is payable to the person who paid the tax. For

example, in the case of rental accommodation, the rebate is payable to the landlord and, where applicable, to the owner of the land. The rebate applies to rental accommodation, where the construction, substantial renovation or conversion commences after February 27, 2000. In the case of leased land, the rebate applies where lease agreements are entered into after February 27, 2000.

Under the QST system, a registrant builder may continue to elect not to include immediately in the calculation of his or her net tax the tax deemed to have been collected respecting a single-unit residential complex or condominium. However, the builder may not claim the rebate for new residential rental property until after the QST is paid.



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, 1999, to September 30, 2000, are listed below.

| Period | Annualized interest rate* | Penalty rate |
|-------------------|---------------------------|--------------|
| | (%) | (%) |
| 1999 | | |
| Oct. 1 – Dec. 31 | 4.7609 | 6 |
| 2000 | | |
| Jan. 1 – Mar. 31 | 4.8264 | 6 |
| Apr. 1 – June 30 | 4.8264 | 6 |
| July 1 – Sept. 30 | 5.9674 | 6 |

* To calculate interest for the purposes of the GST, find the daily rate by dividing the annualized rate by 366.

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, 1999, to September 30, 2000.

| 1999 | | Interest rate (%) |
|-------------------|----------------|-------------------|
| Oct. 1 – Dec. 31 | Refunds | 4.25 |
| | Debts | 9 |
| 2000 | | |
| Jan. 1 – Mar. 31 | Refunds | 4.40 |
| | Debts | 9 |
| Apr. 1 – June 30 | Refunds | 4.40 |
| | Debts | 10 |
| July 1 – Sept. 30 | Refunds | 4.75 |
| | Debts | 10 |

The **penalty** rates are indicated below:

- **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.



Interpretation Bulletins

Over the period from April to June 2000, the Ministère du Revenu published 24 interpretation bulletins, of which half pertain to income tax and the others to 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 are sold individually (price varies according to the number of pages) or on a subscription basis, through Les Publications du Québec. For information about subscriptions or the availability of bulletins, call (418) 643-5150 or 1 800 463-2100.

Income tax

ADM.1.3/R5

List of "Interprétation Revenu Québec" bulletins published by the Ministère du Revenu du Québec from April 1, 1999, to March 31, 2000

ADM.2/R7

Advance Rulings

ADM.2.1/R2

Chargeable Opinions

IMP-518-1/R3

Rollover at the Time of Disposing of Property to a Taxable Canadian Corporation - Share Consideration

IMP.1015-5

The Tax Obligations of a Person Who Employs an Artist Working in One of the Fields of Artistic Endeavour Covered by the Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., c. S-32.1)

IMP.1138-3/R3

Reduction of the Paid-up Capital - Interest in a Partnership or Joint Venture

IMP.1138-4/R1

Commercial Paper

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Interest rates

SPECIAL 131

Responsibilities of the BDNE Transferred to Investissement Québec

SPECIAL 132

Adjustments to Certain Measures Concerning Québec's Financial Sector

SPECIAL 133

Introduction of the Cité du commerce électronique

SPECIAL 134

Bill 29 - An Act to amend the Taxation Act and other legislative provisions

Consumption taxes

ADM.1.3/R5

List of "Interprétation Revenu Québec" bulletins issued by the Ministère du Revenu from April 1, 1999, to March 31, 2000

ADM.2/R7

Advance Rulings

ADM.2.1/R2

Chargeable Opinions

LMR.28-1/R46

Interest Rates

SPECIAL 112

Bill 29 - An Act to amend the Taxation Act and other legislative provisions

TVQ.16-17/R2

Rules relating to Indians

TVQ.80.2-2

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TVQ.124-2

School Transportation Service Performed for School Boards or Private Educational Institutions

TVQ.162-1

Collection of the Fees for the Publication of Rights in the Register of Personal and Movable Real Rights of the Ministère de la Justice and the Consultation Fees in respect of the Sale or Long-Term Lease of a Road Vehicle

TVQ.164.1-1/R2

Municipal Upgrading of Roads Managed by the Ministère des Transports du Québec

TVQ.177-4

The Supply of Creatine and Similar Products

TVQ.198-4

The Québec Sales Tax (QST) and the Judicial Costs and Extrajudicial Fees Charged to a Debtor



Tax News is published quarterly by the Direction générale 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.

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

Suggestions, comments and subscription enquiries should be faxed to (418) 646-0167. Your letter 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.

Director General of Communications

Michèle LaSanté

Editor

Linda Di Vita

Marie Godbout (collaboration)

Advisory Committee

Yves Bannon André St-Onge

Sylvain Denault Claire Thibault

Carole Lafond Manon Tremblay

Ginette Landry Marie-Paule Guilbault
(agente de liaison, ADRC)

Martin Ménard

Writers

Linda Di Vita Michèle Lafleur

Céline Giguère Carole Lafond

Marie Godbout Manon Tremblay

Nathalie L'Italien

Translators

Susan Deichert

Jonathan Keathley

Sarah McNeill

Joanne Velenovsky

Graphics

Jacinthe Coulombe

Legal deposit
Third quarter 2000
National Library of Canada
ISSN 1192-1730
IN-136.51-V