

## Consumer Taxes

**TVQ. 108-1/R2** Health care institution, within the meaning of paragraph 2 of the definition of that expression in section 108 of the *Act respecting the Québec sales tax*, and meals acquired or supplied by a health care institution

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**Reference(s):** *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 1, 99.1, 108, 109, 118, 138.1, 138.4, 141 and 157

*This bulletin supersedes bulletin TVQ. 108-1/R1 dated March 31, 2004.*

This bulletin explains the position of the Ministère with regard to the requirements that must be met for a facility or part of a facility to constitute a health care institution within the meaning of paragraph 2 of the definition of that expression in section 108 of the *Act respecting the Québec sales tax* (AQST).

This bulletin also explains how the Québec sales tax (QST) applies to meals acquired or supplied by a facility, depending on whether or not the facility constitutes a health care institution according to the position set forth in the bulletin.

### DESCRIPTION OF THE SITUATION

1. Certain facilities operate residences for elderly or retired persons on a for-profit or not-for-profit basis.
2. A facility is comprised of housing units, which may be equipped with a stove and a refrigerator or with sufficient equipment for the preparation of food.
3. The facility has nursing care staff ensuring the presence of at least one nurse, 24 hours a day.
4. The facility also provides the residents with assistance with the activities of daily living and social, recreational and other related services to meet the needs of the residents.
5. In general, the facility has a dining room where three meals a day are served. Only the residents and their guests may have meals in the dining room, which is not open to the general public.
6. In some cases, food and beverages are supplied by a food service operator under the terms of a contract whereby meals for the residents of the facility are provided on a regular basis. The recipient of the supply is the operator of the facility.

7. In some cases, the supply of meals for the residents of the facility is optional; meals are sold by way of meal plans or single meal tickets.

## **RELEVANT PROVISIONS OF THE ACT**

8. A “health care institution” is, according to paragraph 2 of the definition of that expression in section 108 of the AQST,

“a facility, or part thereof, operated for the purpose of providing residents of the facility who have limited physical or mental capacity for self-supervision and self-care with

- (a) nursing and personal care under the direction or supervision of qualified medical and nursing care staff or other personal and supervisory care, other than domestic services of an ordinary household nature, according to the individual requirements of the residents,
- (b) assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents, and
- (c) meals and accommodation.”

9. Section 118 of the AQST exempts supplies of food and beverages, including the services of a caterer, made to an operator of a health care institution under a contract to provide meals for the patients or residents of the institution on a regular basis.

10. Moreover, section 99.1 of the AQST exempts supplies of meals made under an arrangement whereby at least 10 meals per week are supplied for a single consideration by a person who is making a supply of a residential complex or unit, where the meals are provided to the occupant of the complex or unit, in the complex or unit or in the residential complex in which the unit is located.

11. Essentially, section 109 of the AQST exempts supplies of institutional health care services made by the operator of a health care institution to a patient or resident of the health care institution.

12. An institutional health care service, as defined in section 108 of the AQST, includes a meal other than one served in a restaurant, cafeteria or similar place where meals are served, if the meal is provided in a health care institution.

## **APPLICATION OF THE ACT**

13. For a facility or part of a facility to qualify as a health care institution, all of the elements listed in subparagraphs a to c of paragraph 2 of the definition of this expression in section 108 of the AQST must be present. In other words, the residents of the facility must be provided with nursing and personal care, assistance with the activities of daily living, and meals and accommodation.

14. Points 15 and 16 of this bulletin provide more specific information about the criteria that must be met for a facility to qualify as a health care institution. The interpretation given has been that of the Ministère since the introduction of the QST system.

15. The services must be intended for persons who have limited physical or mental capacity for self-supervision and self-care. The residents of the facility must require the services on a daily

basis. Consequently, the supply of the services must be one of the main purposes of the facility, rather than a secondary or discretionary benefit.

**16.** Meals (one of the elements referred to in point 13) must be provided on a mandatory basis, and must include at least lunch and supper.

**17.** Where one or more elements referred to in point 13 are provided on an optional basis, the Ministère considers that the facility does not qualify as a health care institution for purposes of the relevant exempting provisions of the AQST.

### **SUPPLIES OF FOOD AND BEVERAGES BY A FOOD SERVICE OPERATOR**

**18.** Where the facility qualifies as a health care institution, a supply of food or beverages made by a food service operator to the operator of the facility, under a contract to provide meals for the patients or residents of the facility on a regular basis, constitutes an exempt supply for the purposes of section 118 of the AQST.

**19.** Where the facility does not qualify as a health care institution, a food service operator acting otherwise than as a non-registrant small supplier must bill QST on the supply of food or beverages referred to in point 18 and collect it from the operator of the facility **unless** the food service operator

- (a) is a charity within the meaning of section 1 of the AQST and the object of the contract entered into with the facility is a catering service under paragraph 4 of section 138.1 of the AQST;
- (b) is a public institution within the meaning of section 1 of the AQST, and the object of the contract entered into with the facility is a catering service under paragraph 5 of section 141 of the AQST;
- (c) makes supplies of food or beverages to a public sector body within the meaning of section 1 of the AQST, under a program established and operated for the purpose of providing prepared food to seniors, underprivileged individuals or individuals with a disability in their places of residence under section 157 of the AQST;
- (d) makes supplies of food or beverages to a charity within the meaning of section 1 of the AQST, under a program established and operated for the purpose of providing prepared food to seniors, underprivileged individuals or individuals with a disability in their places of residence under section 138.4 of the AQST.

### **SUPPLIES OF MEALS BY THE FACILITY**

**20.** Where a facility that qualifies as a health care institution makes a supply of meals to its residents, the supply constitutes an institutional health care service. The supply is an exempt supply referred to in section 109 of the AQST, to the extent that all the conditions provided for in that section are met.

**21.** Where a facility that does not qualify as a health care institution makes a supply of meals to its residents, in the form of meal plans providing at least 10 meals per week for a single consideration,

the supply is an exempt supply under section 99.1 of the AQST, to the extent that all the conditions provided for in that section are met.

**22.** Where a supply of meals, in a manner other than that referred to in point 21 (such as on a unit basis), is made to the residents of a facility that does not qualify as a health care institution and that is acting otherwise than as a non-registrant small supplier, the supply constitutes a taxable supply, since no exemption is applicable.

## **APPLICATION**

**23.** This bulletin applies as of July 1, 1992.

**24.** However, this bulletin applies from April 1, 2001, in respect of facilities that meet all the conditions required to qualify as a health care institution but that supply meals, or assistance with the activities of daily living, on an optional basis.

**25.** In spite of this, where a food service operator or a facility collected taxes before April 1, 2001, on the supply of food and beverages or meals, the amounts in question must be remitted to the Ministère.