

Consumer Taxes

TVQ. 138.1-1/R1 **Supply by a Charity of Funeral Property and Services**
Date of publication: **December 29, 2011**

Reference(s): *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 1, 16, 34 and 138.1*

This version of interpretation bulletin TVQ. 138.1-1 replaces the version of September 30, 1999, in order to take into account the amendments made in respect of the exemption for movable property supplied by way of lease, licence or similar arrangement in conjunction with an exempt supply of immovable property by way of lease, licence or similar arrangement.

This interpretation bulletin has effect from January 1, 1997.

This bulletin explains how the *Act respecting the Québec sales tax* (AQST) applies in respect of supplies of certain funeral property and services made by a charity.

APPLICATION OF THE ACT

1. The term “charity” used in the AQST refers to a registered charity within the meaning of section 1 of the *Taxation Act* (CQLR, chapter I-3) or a registered Canadian amateur athletic association within the meaning of that Act, but does not include a public institution.
2. The term “public institution” is defined as a registered charity within the meaning of section 1 of the *Taxation Act* that is a school authority, a public college, a university, a hospital authority or a local authority that is a municipality pursuant to the AQST.
3. Section 138.1 of the AQST sets forth the principle whereby a supply of any property or service made by a charity is exempt, except for property and services listed in paragraphs (1) to (13) of that section.
4. Certain charities operate cemeteries that they own. Sometimes these cemeteries include one or more mausoleums or columbariums designed to receive the remains of deceased persons. The supplies most often made by such charities are the following:
 - the long-term lease (for 99 years in most cases) of plots including maintenance for the term of the interment and sometimes the foundation (the foundation is the concrete base on which the monument is placed). In some cases, inhumation and the monument are included;

- the short-term lease (for 10 years in most cases) of community plots including maintenance for the term of the interment. In some cases, inhumation is included;
- the long-term lease (for 99 years) of mausoleum crypts and columbarium niches. In some cases, a ceramic photo of the deceased is included (a niche is a recess in a wall used to house a funerary urn containing the ashes of the deceased; a crypt is a kind of flat-bottomed niche designed to receive one or more coffins containing the remains of the deceased);
- the short-term lease (for 10 years) of community niches in a columbarium;
- inhumation;
- exhumation;
- cremation;
- the manufacture and installation of foundations;
- the sale of monuments;
- the sale of votive lights;
- the sale of ceramic photos of the deceased.

5. The supply of a cemetery plot or a space in a mausoleum may be made through an interment agreement under which interment rights are granted for a term of 99 years on a plot or a space in a mausoleum, including maintenance of the premises for the term of the contract, all for a lump-sum price. For plots on which a foundation has already been laid, the foundation is always included.

6. The *Civil Code of Québec* (C.C.Q.) does not provide for the possibility of assigning interment rights on an immovable while retaining title thereto. Assignment of interment rights is a common law concept that does not exist in civil law. But since such an assignment is similar to the long-term lease of an immovable, Revenu Québec refers to the rules for the supply of immovables by way of long-term lease for the purposes of the AQST.

7. Supplies of mausoleum crypts and columbarium niches are considered to be supplies of immovables by way of lease.

8. The supply of a foundation intended for the placement of a funeral monument constitutes the supply of an immovable, since the foundation is joined to the immovable without losing its individuality (article 903 C.C.Q.). This does not constitute the supply of a service, since what the recipient of the supply wishes to obtain is an immovable. In addition, this constitutes the supply of an immovable by way of lease, since the supply of the foundation is inseparable from the supply of the cemetery plot on which it is placed.

9. The supply of an immovable by a charity made by way of short-term or long-term lease is exempt under section 138.1 of the AQST. The exemption includes the plot maintenance service supplied with the lease of the plot for a single consideration.

10. The supply by a charity of the following services is exempt under section 138.1 of the AQST: inhumation, exhumation, cremation, annual maintenance and perpetual maintenance.

11. Any property, in particular a funeral monument and a photo of the deceased, that is supplied by a charity by way of sale along with the plot or niche, as applicable, for a single consideration is, notwithstanding that fact, deemed a separate supply from the supply of the plot and treated as prescribed by the AQST for the purposes of the Québec sales tax (QST).

12. The supply by way of sale of a funeral monument by a charity is taxable or exempt, depending on whether the monument is or is not fixed to the foundation on which it is placed. If it is fixed to the foundation, the monument becomes an immovable (article 903 C.C.Q.) and its supply constitutes the supply of an immovable by way of lease, which is exempt under section 138.1 of the AQST. However, if the monument is merely placed on the foundation, then its supply by way of sale constitutes a taxable supply of corporeal movable property (unless the supply is exempt under another legislative provision), since it is acquired, manufactured or produced by the charity for the purpose of resupply and such resupply constitutes a supply excluded from the exemption on supplies made by charities referred to in paragraph (4) of section 138.1 of the AQST.

13. The supply by way of sale of votive lights and ceramic photos of the deceased made by a charity constitutes a taxable supply (unless the supply is exempt under another legislative provision), since such property is corporeal movable property acquired, manufactured or produced for the purpose of resale and such a supply by a charity is taxable under the exclusion provided for in paragraph (4) of section 138.1 of the AQST.

14. Moreover, if corporeal movable property is supplied by way of lease in conjunction with the exempt supply of an immovable that in turn was supplied by way of lease, the supply of such corporeal movable property is also exempt under the exclusion provided for in paragraph (4) of section 138.1 of the AQST.