

Consumer Taxes

TVQ. 165-1/R2

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The Carrying Out of Municipal Works

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Reference(s): *Act respecting the Québec sales tax* (CQLR, c. T-0.1), sections 1, 164, 164.1 and 165

This version of interpretation bulletin TVQ. 165-1 replaces the version of June 29, 2012. The bulletin was revised to reflect amendments to the Act respecting the Québec sales tax (see L.Q. 2015, c. 21, s. 711) that introduced a rebate of the Québec sales tax (hereinafter "QST") for municipalities. This version of the bulletin is effective January 1, 2014. The rebate can be claimed for QST that became payable after December 31, 2013, and was not paid before January 1, 2014.

This bulletin explains how the *Act respecting the Québec sales tax* (hereinafter "AQST") applies where an agreement pertaining to the carrying out of municipal works is made between a municipality and a real estate developer.

APPLICATION OF THE ACT

1. In accordance with section 145.21 of the *Act respecting land use planning and development* (CQLR, c. A-19.1; hereinafter "ALUPD"), the council of a municipality (hereinafter "the Municipality") may, by bylaw, subordinate, in particular, the issue of a building or subdivision permit to the making of an agreement between the applicant and the Municipality pertaining to work for the construction of municipal infrastructures or equipment and to the payment or apportionment of expenditures incurred in respect of such work.
2. For the purposes of section 145.21 of the ALUPD and in the context of this bulletin, the applicant is a developer that sells serviced land, that is, land capable of receiving municipal services (hereinafter "the Developer").
3. Work for the construction of municipal infrastructures or equipment includes essentially putting in place a water distribution, sewerage or drainage system, paving the public road and installing a lighting system (hereinafter "the Works").
4. As indicated in point 1 above, a bylaw must be passed if the Municipality entrusts the Developer with the carrying out of the Works.

5. If no such bylaw is passed in accordance with the ALUPD, the Municipality remains the party responsible for carrying out the Works.

Where the Municipality is responsible for carrying out the Works

6. The Municipality acts as the principal contractor and, as such, directs the carrying out of the Works. This includes getting the Works under way and supervising their progress.

7. Typically, the Municipality entrusts subcontractors with the carrying out of the Works by means of a call for tenders.

8. The Municipality uses two methods of paying subcontractors:

- it pays the subcontractors itself; or
- it agrees that the Developer will pay the subcontractors directly.

Where the Developer is responsible for carrying out the Works

9. The Developer acts as the principal contractor and directs the carrying out of the Works.

10. Typically, the Developer entrusts subcontractors with the carrying out of the Works.

11. Once the works are completed, the Developer usually transfers ownership of the streets to the Municipality for nominal consideration.

Applicable provisions

12. Under paragraph (1) of the definition of the term “recipient” in section 1 of the AQST, the person who is liable, under an agreement for a supply, to pay the consideration for the supply is the recipient of the supply.

13. Subparagraph (1) of the first paragraph of section 164 of the AQST provides that a supply of a municipal service made by a government or municipality to owners or occupants of immovables situated in a particular geographic area is exempt where the owners or occupants have no option but to receive the service.

14. Paragraphs (1), (3) and (5) of section 164.1 of the AQST provide that a supply made by a municipality or a board, commission or other body established by a municipality of any of the following services is exempt:

(1) a service of installing [...] street or traffic lights or property similar to any of the foregoing;

[...]

(3) a service of [...] planting vegetation;

[...]

(5) a service of installing accesses or egresses.

15. Also exempt, under section 165 of the AQST, is a supply made by a municipality of a service of installing, repairing, maintaining or interrupting the operation of a water distribution, sewerage or drainage system.

INTERPRETATION

Where the Municipality is responsible for carrying out the Works

16. In such a case, to meet its obligations toward the Developer for the carrying out of the Works, the Municipality generally employs subcontractors. Revenu Québec considers that there are two separate supplies of services: one concerns the services rendered to the Municipality by the subcontractors, and the other concerns the services that the Municipality has committed to render to the Developer.

17. Pursuant to paragraph (1) of the definition of the term “recipient” in section 1 of the AQST, the Municipality is the recipient of the services rendered by its subcontractors, whereas the Developer is the recipient of the services rendered by the Municipality under the agreement between it and the Municipality.

18. The services that the Municipality renders to the Developer give rise to an exempt supply of municipal services that are referred to in sections 164, 164.1 and 165 of the AQST. Effective January 1, 2014, the Municipality is therefore entitled to a rebate of the Québec sales tax (hereinafter “QST”) in respect of expenses incurred, in particular, in the course of making exempt supplies.

19. Where the Municipality bills the cost of the Works and includes an amount corresponding to the QST it is unable to recover, that amount cannot be considered tax.

20. The Developer, although usually a registrant by reason of making taxable supplies of serviced land to individuals, is not entitled to claim an input tax refund (hereinafter “ITR”) for the amount corresponding to the QST that the Municipality is unable to recover in respect of the supply acquired from its subcontractors.

21. Revenu Québec considers an agreement between the Municipality and the Developer under which the latter will pay the subcontractors directly to be merely a method of payment and not an amendment to the original subcontract. In the event of default of payment by the Developer, the Municipality is still bound to its subcontractors under the original subcontract.

22. Therefore, if the Developer pays the subcontractors directly, it is not entitled to an ITR for the amount of QST billed by them. As the recipient of the services rendered by its subcontractors, the Municipality remains liable for that amount of QST.

Where the Developer is responsible for carrying out the Works

23. In such a case, the Developer is the recipient of the services rendered by the subcontractors entrusted by the Developer with the carrying out of the Works.

24. If the Developer is a registrant, it is entitled to an ITR for the QST paid or payable to its subcontractors, since that QST is in respect of expenses it incurred in the course of making a supply by way of sale of serviced land, which is taxable when made to individuals, as explained in point 20.