

## Consumer Taxes

TVQ. 16-2/R3      **Non-Local Flower Deliveries Made Using an Order Relay Service**  
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Reference(s):      *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 16, 22.7, 22.15.0.1, 22.15.0.2, 22.32, 23, 185, 327.1 and 422*

*This version of interpretation bulletin TVQ. 16-2 replaces the version of May 29, 1998, with respect to supplies made after April 30, 2010. The bulletin was revised to take into account new rules (applicable since May 1, 2010) for determining whether a supply of a service is made in Québec.*

This bulletin explains how the *Act respecting the Québec sales tax (AQST)* applies in respect of a sale of flowers made using an order relay service supplied by a person (the intermediary) acting as an intermediary between two florists. The explanations take into account new rules with respect to the place of supply, deriving from the harmonization of the Québec sales tax (QST) system with the harmonized sales tax system.

### **DESCRIPTION OF VARIOUS TRANSACTIONS BETWEEN THE FLORISTS CONCERNED AND THE INTERMEDIARY**

1. A contract for the sale of flowers is entered into between a florist (the sending florist) and a customer.
2. The sending florist transmits the customer's order to a florist (the delivering florist) in the locality where the flowers are to be delivered. The delivering florist is chosen from a list provided by the intermediary.
3. Through the intermediary, the sending florist pays the delivering florist an amount equal to a certain percentage (for example, 80%) of the amount of the order. The sending florist also pays a certain amount to the intermediary for the latter's clearing service (for example, 7% of the value of the order).
4. The clearing service supplied by the intermediary may be performed entirely in Québec or entirely outside Québec.

## **APPLICATION OF THE ACT**

### **Flowers ordered in Québec for delivery in Québec**

5. The sending florist must collect QST in respect of the supply of flowers the sending florist makes by way of sale to the customer. Since the flowers are delivered in Québec, the supply is deemed to be made in Québec.

6. QST also applies in respect of the supply of flowers the delivering florist makes by way of sale to the sending florist, since the flowers are delivered in Québec.

### **Flowers ordered in Québec for delivery outside Québec**

7. The sending florist is not required to collect QST in respect of the supply of flowers the sending florist makes by way of sale to the customer. Since the flowers are delivered outside Québec, the supply is deemed to be made outside Québec.

8. In respect of the supply of flowers the delivering florist makes by way of sale to the sending florist, the latter does not have to pay QST, since the supply is also made outside Québec, given the fact that the flowers are delivered outside Québec.

### **Flowers ordered outside Québec for delivery in Québec**

9. A sending florist that is a QST registrant must collect QST in respect of the supply of flowers the sending florist makes by way of sale to the customer. Since the flowers are delivered in Québec, the supply is deemed to be made in Québec.

10. However, if the sending florist is not resident in Québec, does not make the supply of flowers in the course of a business carried on in Québec and is not registered for QST purposes, QST does not apply in respect of the supply the sending florist makes to the customer, since the supply is deemed to be made outside Québec under section 23 of the AQST.

11. The supply of flowers made by the delivering florist to the sending florist is subject to QST pursuant to section 327.1 of the AQST, concerning drop shipments.

12. According to that section, where a registrant (the Québec delivering florist), under an agreement between the registrant and a non-resident person who is not registered in Québec for QST purposes (the sending florist), makes a taxable supply in Québec of corporeal movable property by way of sale to the non-resident person and where, under the agreement, the registrant at any time causes physical possession of the property to be transferred, at a place in Québec, to a third person, that is, the consignee (the person to whom the flowers are sent), the registrant is deemed to have made to the non-resident person, and the non-resident person is deemed to have received from the registrant, a taxable supply of the property which is deemed to have been made for consideration, which becomes due and is paid at that time, equal to

- nil, where the registrant has caused physical possession of the property to be transferred to a consignee to whom the non-resident person has supplied the property for no consideration; or

— the fair market value of the property at that time, in any other case.

**13.** In such circumstances, since this is not a case where the non-resident person (the sending florist) supplies flowers for no consideration to the person to whom the flowers are sent, it follows that the consideration for the supply made by the delivering florist to the sending florist, on which QST must be calculated, is equal to the amount representing the fair market value of the flowers. That fair market value is the price the sending florist charges the customer for the supply of flowers (a value equal to the total price of the order).

**14.** In an interprovincial context, that is, where flowers are ordered outside Québec but in Canada for delivery in Québec, Revenu Québec allows the delivering florist to calculate the QST on the same consideration as that on which the goods and services tax (GST) is calculated, which corresponds to the consideration the delivering florist requires from the sending florist (for example, 80% of the amount of the order). This relief measure is granted to facilitate the application of the AQST to florists, considering the fact that, under the GST system, the drop shipment rules do not apply in an interprovincial context.

**15.** Furthermore, in an international context, that is, where flowers are ordered outside Canada for delivery in Québec, the Québec florist must, under the drop shipment rules, collect QST calculated on the fair market value of the flowers, in accordance with point 13 above.

### **Clearing service**

**16.** Under section 22.15.0.1 of the AQST, a supply of a service is deemed to be made in Québec if, in the ordinary course of the supplier's business, the supplier obtains one address in Québec that is a home or business address in Canada of the recipient or, where the supplier obtains more than one such address, the recipient's address in Canada most closely connected with the supply. Under section 22.15.0.2 of the AQST, if the supplier does not obtain an address and the Canadian element of the service is performed primarily in Québec, the supply of a service is deemed to be made in Québec.

**17.** Thus, assuming the intermediary obtains an address in Québec, the supply of the clearing service by the intermediary is deemed to be made in Québec and the intermediary must collect QST in respect of the supply.

**18.** Assuming the intermediary does not obtain an address, the supply of the clearing service by the intermediary is deemed to be made in Québec if the Canadian element of the service, that is, the portion of the service performed in Canada, is performed primarily in Québec. Such would be the case if the clearing service were performed entirely in Québec.

**19.** It should be noted, however, that if the recipient of the supply of the clearing service is a florist not resident in Québec, the intermediary need not collect QST, since the supply may be a zero-rated supply under section 185 of the AQST.

**20.** Also, if the clearing service is not performed primarily in Québec, it follows that the supply of the service is deemed to be made outside Québec and is not, therefore, subject to QST. Such would be the case if the clearing service were performed entirely outside Québec.