

Consumer Taxes

TVQ. 22.7-1/R1 **Place of Supply in the Case of a Supply by Way of Sale of Corporeal Movable Property**

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Reference(s): *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 16, 17, 22.7, 22.9, 22.32 and 179*

This version of interpretation bulletin TVQ. 22.7-1 replaces the version of January 31, 2001. The bulletin was revised in order to update its content. It is effective April 1, 1997.

This bulletin discusses how the *Act respecting the Québec sales tax (AQST)* applies with respect to the place of supply in the case of an interprovincial or international supply of corporeal movable property by way of sale.

APPLICATION OF THE ACT

1. Under the first paragraph of section 16 of the AQST, every recipient of a taxable supply made in Québec must pay the Québec sales tax (QST) on the value of the consideration for the supply.

INTERPROVINCIAL SUPPLIES

2. Section 22.7 of the AQST states that a supply of corporeal movable property by way of sale is deemed to be made in Québec if the property is delivered in Québec to the recipient of the supply.

3. The term “delivered” used in that section refers to the notion of “delivery,” which encompasses two separate situations: either the seller physically hands over the property to the recipient, or the property is put at the recipient’s disposal.

4. In this respect, presumption of delivery is provided for in the first paragraph of section 22.9 of the AQST. Thus, according to subparagraph (1) of the first paragraph of that section, property is deemed to be delivered in Québec where the supplier ships the property to a destination in Québec that is specified in the contract for carriage of the property or transfers physical possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination, or where the supplier sends the property by mail or courier to an address in Québec.

5. Conversely, subparagraph (2) of the first paragraph of section 22.9 of the AQST provides that property is deemed to be delivered outside Québec where the supplier ships the property to a destination in another province that is specified in the contract for carriage of the property or transfers physical possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to such a destination, or where the supplier sends the property by mail or courier to an address in another province.

6. The expression “that the supplier has retained on behalf of the recipient” means that the supplier has entered into a contract with a common carrier or consignee at the recipient’s request. Since a contract of carriage is a consensual contract, i.e., a contract arising from the mere meeting of the minds of the parties, the matter of determining who retained the services of the carrier depends on the facts and circumstances specific to each case.

7. It is to be noted that section 17 of the AQST provides, in particular, that every person who brings into Québec corporeal property, or causes such property to be brought into Québec, for consumption or use in Québec by the person or at the person’s expense by another person, must, immediately after the bringing into Québec of the property, pay to the Minister of Revenue a tax in respect of that property, calculated at the rate provided for under that section, on the value of the property. That section does not apply, however, to a situation where corporeal property is brought into Québec by a registrant for exclusive consumption or use in the course of the commercial activities of the registrant and in respect of which the registrant would, if the registrant had paid the tax provided for under the first paragraph of that section in respect of that property, be entitled to apply for an input tax refund.

INTERNATIONAL SUPPLIES

8. Where corporeal movable property supplied by way of sale is delivered outside Canada to the recipient, the second paragraph of section 22.9 of the AQST precludes the presumption of delivery provided for in the first paragraph of that section. In such situations, section 22.7 of the AQST does not apply because the property is not delivered in Québec, and the supply is therefore deemed to be made outside Québec, pursuant to section 22.32 of the AQST.

9. Nonetheless, a recipient of corporeal movable property supplied by way of sale outside Québec who brings that property into Québec may be required to determine the amount of tax payable on the value of the corporeal movable property and to pay that tax to the Minister, pursuant to section 17 of the AQST.

Examples

10. A “free on board” (FOB) contract is a contract under which the parties agree on the place where the corporeal movable property is to be put at the recipient’s disposal, and thus delivered to the recipient.

11. In the case of an FOB contract with a shipping point in the United States, pursuant to which the seller retains the services of a carrier on behalf of a customer in order to have corporeal movable property delivered to the customer in Québec, the supply is deemed to be made outside Québec

pursuant to section 22.32 and the second paragraph of section 22.9 of the AQST. Nonetheless, the recipient may have to determine the amount of QST payable under section 17 of the AQST.

12. Conversely, in the case of an FOB contract with a shipping point in Québec, pursuant to which the seller retains the services of a carrier on behalf of a customer in order to have corporeal movable property delivered to the customer in the United States, the supply is deemed to be made in Québec pursuant to section 22.7 of the AQST. Nonetheless, such a supply may be zero-rated under the QST system where the conditions provided for in section 179 of the AQST are met.