

Consumer Taxes

TVQ. 350.43-1/R3 Measures concerning flea markets
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Reference(s): *An Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 350.43 to 350.47*

This version of interpretation bulletin TVQ. 350.43-1 replaces the version of September 30, 2009. The bulletin was revised to reflect the repeal, in 2012, of form VD-350.44.A. However, the position set out in the bulletin remains unchanged. Only some style changes were made.

This bulletin clarifies the application of the *Act respecting the Québec sales tax (AQST)* with respect to flea markets.

THE SITUATION

1. Flea markets bring together individuals who wish to sell used corporeal movable property. Generally, the transactions that take place do not lead to taxable supplies, as they are made otherwise than in the course of a commercial activity.
2. However, measures have been provided to ensure that the Québec sales tax (QST) is collected by the persons, including individuals, that make supplies of services or of new or used corporeal movable property in the course of a commercial activity at flea markets.

DEFINITIONS

3. In this bulletin:

“flea market” refers to a business identified as a flea market or similar commerce when it is operated in a public place where one may reasonably expect to find primarily persons who do not engage in commercial activities who wish to sell new or used property or offer services and who enjoy the use of a space for that purpose. Businesses where only merchants operating on a regular basis can be found, such as shopping centres, are excluded;

“occupant” refers to a person who wishes to sell new or used merchandise or provide services in a flea market;

“operator” refers to a person that provides space in a flea market to occupants;

“prescribed form” refers to form VD-350.44, *Déclaration concernant les marchés aux puces et autres commerces semblables*.

APPLICATION OF THE AQST

FILING DOCUMENTS AND POSTING A LIST OF OCCUPANTS

4. Where an operator provides an occupant with a space in a flea market, the following rules apply:

- (a) The operator must file with the Minister of Revenue, on the prescribed form containing the prescribed information, a list of the occupants for a particular month on or before the fourteenth day of the month following that month.
- (b) Upon filing with the Minister the list referred to in paragraph (a), the operator must post in public view, at the operator’s principal establishment and in a place easily accessible to the public on the premises of the flea market, a list containing the names only of the occupants for the periods referred to in paragraph (a).

5. The list of occupants may be filed with the Minister by means of a facsimile of the prescribed form.

6. Since filing the information required of an operator is closely connected with the collaboration of the occupants, section 350.45 of the AQST requires that each occupant furnish the operator, on the operator’s request, with the information that the latter is required to file with the Minister.

PENALTIES

7. A penalty is provided where operators fail to comply with one or more of their obligations.

8. Where an operator fails to file the prescribed form (or a facsimile of the form) containing the prescribed information, the operator incurs a penalty of \$100 for each day of non-compliance.

9. Likewise, where an operator fails to post the list of occupants as required in compliance with the AQST, the operator incurs a penalty of \$100 for each day of non-compliance.

10. Where the operator fails to both file the duly completed form for the prescribed period and post the list of the occupants’ names for the same period, the operator is liable for both failures and incurs a penalty of \$200 for each day of non-compliance.