

Consumer Taxes

TVQ. 51-3 **Reduction in the Consideration for a Supply**
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Reference(s): *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 16, 51, 82, 83, 448

This bulletin discusses how the *Act respecting the Québec sales tax* (the “Act”) applies to a reduction in the consideration for the supply of a product offered by a merchant as the result of an error by an optical character reader.

THE SITUATION

1. Section 223 of the *Consumer Protection Act* (“CPA” herein) provides that a merchant must indicate the sale price on all the goods offered for sale in the merchant’s establishment.
2. There are two exemptions from the application of section 223 CPA though. They are provided for in sections 91.1 and following of the *Regulation respecting the application of the Consumer Protection Act* (R.R.Q., c. P-40.1, r. 1). One exemption pertains to merchants whose establishments make use of the universal product code optical scanning technology.
3. In the case at hand, merchants who decide to avail themselves of this exemption must adopt an accurate pricing policy. Pursuant to that policy, where the price of the good rung in at the check-out is higher than the price advertised, the lower price shall be honoured and the merchant shall give the good to the consumer free of charge, if the accurate price of the good is \$10 or less. Where the accurate price of the good is higher than \$10, the merchant shall first correct the price and grant the consumer a discount of \$10 on the corrected price.

THE ACT

4. Section 16 of the Act provides that every recipient of a taxable supply made in Québec shall pay the Québec sales tax (QST) on the value of the consideration for the supply.
5. In this respect, paragraph 1 of section 51 of the Act provides that the value of the consideration, or any part thereof, for a supply is deemed to be equal, where the consideration or that part is expressed in money, to the amount of the money.
6. Under section 82 of the Act, tax in respect of a taxable supply is payable by the recipient on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due. In general, under paragraph 1 of section 83 of the Act, the consideration or a

part thereof for a taxable supply is deemed to become due on the earlier of the day the supplier first issues an invoice in respect of the supply for that consideration or part and the date of that invoice.

7. In other respects, section 448 of the Act provides that where a particular person has charged to, or collected from, another person tax on the consideration or a part thereof for a supply and, for any reason, the consideration or part is subsequently reduced, the particular person may, in the reporting period of the person in which the consideration was so reduced or within four years after the end of that period,

- (1) where tax calculated on the consideration or part was charged but not collected, adjust the amount of tax charged by subtracting the portion of the tax that was calculated on the amount by which the consideration or part was so reduced; and
- (2) where the tax calculated on the consideration or part was collected, refund or credit to that other person the portion of the tax that was calculated on the amount by which the consideration or part was so reduced.

8. Lastly, paragraph 1 of section 449 of the Act provides that where a particular person has adjusted, refunded or credited an amount in favour of, or to, another person in accordance with section 448 of the Act, the particular person shall, within a reasonable time, issue to the other person a credit note, containing prescribed information, for the amount of the adjustment, refund or credit, unless the other person issues a debit note, containing prescribed information for the amount.

APPLICATION OF THE ACT

9. Where, in the circumstances described in 1 to 3 above, a merchant must give the property to a consumer free of charge, the tax must not be paid by the consumer since no consideration has been charged.

10. Thus, if the tax has become payable, i.e., an invoice has been issued, or if the tax was collected by the merchant, the merchant may adjust or refund the tax in accordance with sections 448 and 449 of the Act.

11. In such a case, under paragraph 1 of section 449 of the Act, the merchant is required to issue within a reasonable time, a credit note containing prescribed information, for the amount of the adjustment, refund or credit, unless the consumer issues a debit note, containing prescribed information for the amount.

12. Hence, the merchant shall have the right to deduct, in calculating his net tax, the tax relative to the overcharge the merchant adjusted or refunded, to the extent that this tax was already included in calculating his net tax, in accordance with section 449 of the Act.

13. Furthermore, when a merchant must correct the price of the property and allow the consumer a \$10 discount on the corrected price, the consideration for the supply is reduced and the tax is therefore payable on the amount of money actually charged to the consumer, i.e. on the corrected price less the \$10 discount.

14. In such a case, where the tax has become payable, i.e., where an invoice has been issued, or where the tax was collected by the merchant, that merchant may, in accordance with sections 448 and 449 of the Act, make the adjustments described in 10 to 12 above.