

Consumer Taxes

TVQ. 541.48-1 **The Specific Duty on New Tires**

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Reference(s): *An Act respecting the Québec sales tax* (R.S.Q., c. T-0.1), sections 541.48 and following

This bulletin discusses how the *Act respecting the Québec sales tax* (the “Act”) applies further to the coming into force, on October 1, 1999, of a specific duty of \$3 per new tire sold or leased by way of retail sale or retail leasing.

DEFINITIONS

Retail Leasing

1. “Retail leasing” means

- (1) in the case of a tire, leasing for purposes other than re-leasing or installation on a road vehicle intended for long term leasing;
- (2) in the case of a road vehicle, long term leasing for purposes other than long term re-leasing;

Examples

The leasing of new tires to a person who is going to install them on delivery vehicles

The leasing of new tires to a person who is going to install them on a road vehicle intended for short term leasing

The long term leasing of a road vehicle to a person for that person's personal use

The long term leasing of a road vehicle to a person who is going to lease the vehicle to clients on a short term basis

Long Term Leasing

2. “Long term leasing” means leasing for a term of at least 12 months.

Tire

3. “Tire” means a road vehicle tire having a rim whose diameter is equal to or less than 62.23 centimetres (24.5 inches) and whose total diameter does not exceed 123.19 centimetres (48.5 inches).

4. The Act does not define what a tire is. Consequently, one must refer to the ordinary meaning of the word “tire”. Generally speaking, a tire may be defined as “a circular rubber tube or ring fitted around the rim of a wheel, as of an automobile, aircraft, or bicycle, to provide a smooth ride and to increase traction. An automobile tire usually consists of an air-filled casing of layered rubberized nylon or steel cord covered with treaded rubber.”¹ The air in some tires may be contained in an inner tube, i.e. “a separate rubber tube that fits inside some tires and is inflated with air.”²

Example

The spare tire of a road vehicle is a prescribed tire when its rim diameter is equal to or less than 62.23 centimetres and its total diameter does not exceed 123.19 centimetres.

New Tire

5. A “new tire” does not include a retreaded or remoulded tire, but includes the spare tire in a road vehicle in respect of which the specific duty has not already been paid.

Road Vehicle

6. “Road vehicle” has the meaning assigned by the *Highway Safety Code* (R.S.Q., c. C-24.2). Thus, a road vehicle means all motor vehicles, whether registered or not, that can be driven on a highway or private road, other than a vehicle that runs only on rails or an electrically propelled wheelchair.

Trailers, semi-trailers and detachable axles are defined as road vehicles.

Examples

The following are road vehicles: trailers, tent trailers, automobiles, trucks, buses, motorcycles, all-terrain vehicles, recreational vehicles, lawn tractors, ice resurfacers (Zambonis), lift trucks, heavy equipment, farm machinery, logging machinery, golf carts, go-karts, snowblowers, etc.

The following are not road vehicles though: wheelbarrows, hand trucks, domestic snowblowers, lawnmowers, subway cars, planes, etc.

Retailer

7. “Retailer” means a person who, in Québec and in the course of the person's commercial activities, engages in a retail sale or retail leasing of a new tire or a road vehicle equipped with new tires.

1 *Gage Canadian Dictionary*, Toronto, Gage Educational Publishing Company, © 1997, page 1535.

2 *Ibid*, 790

Sale

- 8.** “Sale” includes any transfer for a consideration
- (a) of the ownership of a tire or road vehicle;
 - (b) of the possession of a tire or road vehicle under an agreement to transfer the ownership of the tire or road vehicle.

Retail Sale

- 9.** “Retail sale” means
- (a) in the case of a tire, a sale for purposes other than resale, leasing or installation on a road vehicle intended for sale or long term leasing;
 - (b) in the case of a road vehicle, a sale for purposes other than resale or long term leasing.

Examples

The sale of new tires or a road vehicle for personal use

The sale of new tires for the purpose of installation on a road vehicle intended for short term leasing

The sale of a road vehicle for the purpose of short term leasing

LIABILITY

Imposition of the Specific Duty

10. A specific duty equal to \$3 per new tire is payable by a purchaser or lessee at the time of the retail sale or retail leasing of a new tire or road vehicle equipped with new tires.

Examples

A business purchases new tires for the purpose of installing them on road vehicles intended for short term leasing. It must pay the specific duty on every new tire.

A business purchases new vehicles for the delivery of its products. The business must pay \$3 per new tire equipping the road vehicles it purchases.

An individual takes a long term lease on a road vehicle equipped with new tires. The individual must pay the specific duty on every new tire equipping the vehicle, including the spare tire.

A seller offers a sales promotion whereby four new tires are available for the price of three. He must collect the specific duty on all four tires.

11. The specific duty does not apply if the sale is not a retail sale or the leasing is not a retail leasing.

Examples

A business purchases new tires for the purpose of selling them or installing them on a road vehicle intended for sale or long term leasing. It is not required to pay the specific duty since this is not a retail sale.

A business purchases a road vehicle equipped with new tires for the purpose of selling it or for long term leasing. The business is not required to pay the specific duty since this is not a retail sale.

A person sells new tires to an automobile manufacturer. These tires will be installed on road vehicles made by the manufacturer. The road vehicles are intended for sale. The specific duty is not required to be collected.

Sales to the Government

12. The specific duty applies at the time of every retail sale or retail leasing of new tires or road vehicles equipped with new tires to the Government of Québec or the Government of Canada.

Sales to Indian Consumers

13. The specific duty applies in like manner to the retail sale or retail leasing of a new tire or a road vehicle equipped with new tires to an Indian, unless the property is delivered on a reserve.

Sales to Diplomats

14. A person who makes a retail sale or retail leasing of new tires or road vehicles equipped with new tires to a diplomatic mission, consular post, or international organization or to a diplomatic agent, a consular agent or a designated agent of an international organization, is required to collect the specific duty.

15. Such persons though, may claim a rebate from the Ministère du Revenu (the “Ministère”) by completing form (LM-120-V) entitled *Tax Rebate Application for Use by Diplomatic Missions, Consular Posts or International Organizations, or by Members Thereof*.

New Tires Brought into Québec

16. The specific duty is payable by every person who carries on business or ordinarily resides in Québec and brings or causes to be brought into Québec a new tire

- (a) for use in Québec by the person, or at the person's expense by another person, or
- (b) for installation in Québec on a road vehicle intended for short term leasing.

Examples

A business purchases new tires in Ontario. It brings them into Québec and is going to have them installed on its delivery vehicles. The business is required to pay the specific duty on every new tire brought into Québec.

A business in Québec carries on the short term leasing of vehicles. It purchases new tires outside Québec. It brings them into Québec. They will be installed on its vehicles intended for short term leasing. The business is required to pay the specific duty.

The Purchase or Leasing of Property Located in Québec

17. The specific duty is payable by every person who carries on business or ordinarily resides in Québec and purchases or leases by way of a retail sale or retail leasing outside Québec a new tire or a road vehicle equipped with new tires that is in Québec at the time of the sale or leasing.

Similar Duty Paid Outside Québec

18. Where a person who carries on business or ordinarily resides in Québec is required to pay the specific duty on new tires and that person has paid, in respect of a new tire, a duty of the same nature in another province or territory of Canada, the specific duty payable under the Act shall be reduced by the amount of the duty of the same nature so paid outside Québec, if that person is not entitled to obtain a rebate of such duty in the other jurisdiction.

Example

A person purchases new tires in Canada, outside Québec, and pays a duty of \$5 per new tire purchased. This sum is remitted to a recycling fund. Since that person is bringing new tires into Québec, in principle, that person should pay the Ministère \$3 for each new tire brought into Québec. However, if that person is not entitled to obtain a rebate of the \$5 duty paid outside Québec, that person is not required to pay the Ministère the specific duty of \$3 ordinarily payable in Québec.

Self-assessment

19. Every person required to pay the specific duty on new tires who has not paid the duty to the retailer (for example, an individual who brings new tires into Québec for installation on his vehicle) shall immediately render account of this duty and pay it to the Ministère.

20. If this person is a “retailer” of new tires or road vehicles equipped with new tires, that person must use form VDZ-541.49-V *Return respecting the specific duty on new tires*. Otherwise, that person must complete form FP-505-V *Special-Purpose Return*.

Change in Use

21. A person who has purchased or manufactured a new tire for

- (a) sale,
- (b) leasing,
- (c) installation on a road vehicle intended for sale or long term leasing,

shall, on the date on which the person begins to use the road vehicle in Québec for any other purpose or arranges for it to be so used at the person's expense by another person, pay the specific duty.

Example

A retailer of new tires uses new tires on his delivery vehicles. He must pay and remit to the Ministère the specific duty of \$3 per new tire used by his business.

22. A person who has leased a new tire for

- (a) re-leasing,
- (b) installation on a road vehicle intended for long term leasing,

shall, on the date on which the person begins to use the road vehicle in Québec for any other purpose or arranges for it to be so used at the person's expense by another person, pay the specific duty.

23. A person who has purchased or manufactured a road vehicle equipped with new tires for

- (a) sale,
- (b) long term leasing,

shall, on the date on which the person begins to use the road vehicle in Québec for any other purpose or arranges for it to be so used at the person's expense by another person, pay the specific duty.

Example

An automobile dealer uses a new road vehicle for road testing. He is required to pay the specific duty on the new tires. When he sells the test vehicle, he shall not have to collect the specific duty since the tires will then be used tires.

24. A person who has taken on the long term leasing of a road vehicle equipped with new tires for the purpose of long term re-leasing, shall, on the date on which the person begins to use the vehicle in Québec for another purpose or arranges for it to be so used at the person's expense by another person, pay the specific duty.

25. After a change in use, the person must directly render account of the specific duty and pay it to the Ministère by means of form VDZ-541.49-V *Return respecting the specific duty on new tires*.

EXEMPTIONS

26. Except for the exemptions mentioned in 27 to 29 below, the specific duty applies to the sale or leasing of a new tire or road vehicle equipped with new tires even where, under the Québec sales tax (QST), such a supply is zero-rated.

Example

A transportation firm purchases and takes possession of new tires in Québec. The firm brings them into Ontario where they will be installed on the firm's transport vehicles. Such a supply may be zero-rated under the QST when the conditions provided for in section 179 of the Act are met. The firm, though, is required to pay the specific duty on every new tire purchased in Québec.

27. The specific duty does not apply when the retailer delivers a new tire or a road vehicle equipped with new tires outside Québec, for use outside Québec.

28. The specific duty does not apply when the retailer delivers a new tire or a road vehicle equipped with new tires to a common carrier for shipment outside Québec, on behalf of a purchaser or lessee who is not resident in Québec and who does not carry on business in Québec, for use outside Québec.

29. The specific duty does not apply where the retailer mails a new tire for shipment outside Québec, on behalf of a purchaser or a lessee who is not resident in Québec and who does not carry on business in Québec, for use outside Québec.

30. In all cases, the retailer must keep all required supporting documents attesting to delivery or shipment of the property outside Québec.

INPUT TAX REFUND

31. The person who pays the specific duty is not entitled to an input tax refund (ITR) in respect of the amount of the specific duty. The specific duty is not an amount of QST.

Example

A business carries on the retail leasing of road vehicles. From time to time, that business purchases new tires for its vehicles. The business is not entitled to a refund of the specific duty paid to its retailer.

ADMINISTRATION

Specific Duty Recorded on Invoices

32. The retailer is required to indicate the specific duty separately from the sale price or rental on every invoice, writing or other document attesting to the sale or leasing and in his registers.

Collection of the Specific Duty

33. As mandatory for the Minister of Revenue, the retailer is required to collect the specific duty of \$3 per new tire at the time of the retail sale or, in the case of retail leasing, at the time of the signing of the leasing contract.

Exceptions to the Collection Obligation

34. The retailer is not required to collect the specific duty where there is no retail sale or retail leasing since in these cases, the specific duty does not apply.

35. The retailer however, must assure himself that his customer purchases or leases the property otherwise than in the course of a retail sale or retail leasing and prove to the Ministère that he was not required to collect the specific duty.

36. In this respect, the proof preferred by the Ministère is a declaration signed by the purchaser or the lessee to the effect that the new tires or the road vehicles equipped with new tires are purchased or leased for purposes to which the specific duty does not apply. This declaration must also include the name, address and QST registration number of the purchaser or lessee. It may be incorporated into the invoice or separately filed. The declaration must be kept by the retailer.

Sample declaration

I, the undersigned, [customer's name] , declare that I am purchasing these new tires for installation on road vehicles intended for retail sale or long term leasing.

Date

Signature

Name of the business and its representative

Address

QST registration number

37. The retail vendor does not have to require that his customer submit such a declaration for every purchase. However, he must always indicate on the invoices the customer's name, address and QST registration number.

QST and GST Collection

38. The specific duty on new tires is part of the consideration for the supply of the tire or road vehicle.

39. Consequently, if the goods and services tax (GST) is required to be collected by the retailer on the sale price or rental of the property, it will also apply to the specific duty.

40. If the QST is required to be collected by the retailer on the sale price or rental of the property, it will also apply to the specific duty.

Examples

The Government of Québec does not pay the GST or the QST when it purchases property or services. Thus, the GST and the QST do not apply to the specific duty it must pay when purchasing new tires.

The seller is a small supplier who is not registered under the GST, but who is required to register under the QST in respect of his new-tire sales activity. He is not required to collect the GST. Nevertheless, he is required to collect the QST on the sale price of the new tire, including the specific duty.

Remittance of the GST and the QST

41. The retailer must render account to the Ministère of the GST and the QST collected on the sale price or the rental and on the specific duty, in his GST and QST return by means of the prescribed forms: form FPZ-500-V *GST/HST-QST Return*, form VDZ-471-V *QST Return* and form FPZ-34-V *GST/HST Return*.

Remittance of the Specific Duty by Means of a Separate Form

42. A retailer must file with the Ministère, as frequently as he is required to file his QST return, an account of the specific duty collected, by means of form VDZ-541.49-V *Return respecting the specific duty on new tires*.

43. Form VDZ-541.49-V *Return respecting the specific duty on new tires* must be used solely to render account of the specific duty on new tires and not be used for GST and QST remittances.

44. Form VDZ-541.49-V must be filed by the retailer for each reporting period, even if no sale or leasing giving rise to this duty was engaged in during the particular reporting period.

45. When the specific duty was not collected at the time of the retail sale or retail leasing, the purchaser or lessee must render an account of this duty and pay it to the Ministère using form VDZ-541.49-V *Return respecting the specific duty on new tires* if he himself is retailer, or form FP-505-V *Special-Purpose Return* in other cases.

QST REGISTRATION

46. Every person, including a small supplier and a person who is not resident in Québec and who does not carry on a business in Québec, is required to register under the QST for the purposes of the following activities:

- (a) the sale or leasing of a new tire;
- (b) the sale of a road vehicle equipped with new or used tires;
- (c) the long term leasing of a road vehicle equipped with new or used tires;

when these supplies are made in Québec in the course of a commercial activity carried on in Québec.

47. These persons may continue to be non-registered with respect to their other activities, barring the other exceptions provided for by the Act (tobacco, alcoholic beverages, fuel, etc.).

RETURNS AND GUARANTEES

48. Sections 447 and 449 of the Act apply, with the necessary adaptations, where the retailer charges or collects an amount as or on account of the specific duty in excess of the duty that was collectible by him.

49. Thus, a retailer who has, during a reporting period, charged to, or collected from, another person an amount as or on account of the specific duty in excess of the duty that was collectible by him may, within two years after the day the amount was charged or collected,

- (a) where the excess amount was charged but not collected, adjust the amount of the duty charged;
- (b) where the excess amount was collected, refund or credit the excess amount to that other person.

50. Where the retailer has adjusted, refunded or credited an amount in favour of, or to, another person, he 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.

51. The amount of the specific duty recorded on the retailer's credit note is deducted in determining the amount of the duties to be remitted to the retailer, to the extent that the amount has already been included in determining the duties to be remitted.

52. Where, in respect of a new tire, a retailer has refunded or credited the entire sale price paid or the market value of such a tire to another person, he shall also refund or credit to that person the duty that person paid on the tire.

53. The rule provided for immediately above applies to leasing, with the necessary adaptations.

Examples

A person leases new tires and pays the applicable specific duty. That person is dissatisfied with his or her purchase and returns to the lessor the following day to obtain some other new tires. The person does not make any disbursement. In the case at hand, the business shall credit the amount of the specific duty to the lessee and shall have to collect the specific duty on the new tires supplied to the customer. In actual fact, the consumer will have paid the specific duty only once.

A person purchases a new vehicle and pays the specific duty that applies to new tires. That person is dissatisfied with his or her purchase and goes to a tire retailer to exchange them. The tire retailer takes the original tires back and installs other new tires on the vehicle. He bills an installation charge. The retailer must credit the duty paid on the tires taken back and charge the specific duty on the second set of new tires. In fact, the consumer will have paid the specific duty only once. If the retailer re-supplies to another customer, as new tires, the tires that were returned to him, he shall have to collect the specific duty. If these tires are used on courtesy vehicles or road test vehicles, the retailer is required to self-assess himself.

A person purchases a new tire guaranteed for 100,000 kilometres and pays the specific duty. The tire proves to be defective after 10,000 kilometres. The person must disburse \$20 to obtain a new tire. That person must then pay the specific duty once again.

EFFECTIVE DATE

54. The specific duty applies to every new tire acquired by way of a retail sale or retail leasing made in Québec after September 30, 1999, or brought into Québec after that date for purposes other than resale, leasing or installation on a road vehicle intended for sale or long term leasing.

55. The specific duty also applies to every new tire equipping a road vehicle acquired in Québec by way of a retail sale or retail leasing after September 30, 1999.

56. This interpretation bulletin has effect from October 1, 1999. It is subject to adoption by the National Assembly of the legislation required to give effect to the measures announced by Québec's Deputy Prime Minister and Minister of State for the Economy and Finance on June 30, 1999.