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## Consumer Taxes

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Act(s): **An Act respecting the Québec sales tax (R.S.Q., c. T-0.1), sections 206.1<sup>1</sup>, 211, 212, 386, 457.1 and 457.1.4**

Subject: **Input tax refunds in respect of expense allowances**

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*This version of interpretation bulletin TVQ. 211-3 replaces that of June 30, 2009. The bulletin has been revised to take into account the increases in the rate of the Québec sales tax that will take effect on January 1, 2011, and January 1, 2012. It also modifies the name of the simplified method for large businesses in order to ensure that the same terms are used in this bulletin as well as bulletins TVQ. 211-5/R1 and TVQ. 212-1/R4.*

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This bulletin clarifies the application of section 211 of the Act respecting the Québec sales tax (AQST), which allows an employer that is a registrant to claim an input tax refund (ITR) in respect of an expense allowance paid to an employee.

### APPLICATION OF THE ACT

#### GENERAL RULES

1. In general, an expense allowance is an amount that an employer pays to an employee in addition to salary or wages, the use of which does not need to be justified.

2. Section 211 of the AQST allows an employer to claim an ITR in respect of an allowance paid to an employee as though the employer itself had incurred the expenses covered by the allowance in the course of its commercial activities.

#### Characteristics of an expense allowance

3. An expense allowance has the following characteristics:

(a) the amount is determined in advance;

(b) the amount is paid to allow the employee to pay for certain types of expenses;

(c) the allowance is paid on a regular basis (for example, weekly) or occasionally (for example, for a specific activity);

(d) the allowance is at the employee's complete disposal;

(e) the amount is not subject to reimbursement by the employee;

(f) there is no requirement for the employee to provide evidence in the form of receipts or other documentation showing that the amount was actually spent;

(g) the amount of the allowance does not necessarily have to correspond to the amount of the expenses incurred by the employee;

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<sup>1</sup> Section 206.1 of the Act respecting the Québec sales tax was repealed for small and medium-sized businesses as of August 1, 1995, and was supposed to be repealed for large businesses as of November 30, 1996 (S.Q. 1995, c. 63, s. 350). However, generally speaking, the repeal of that section in respect of large businesses was initially postponed until March 31, 1997 (Budget Speech and Additional Information, May 9, 1996, Appendix A, p. 11) and subsequently postponed indefinitely (Budget Speech and Additional Information, March 25, 1997, Appendix A, p. 204, and S.Q. 1997, c. 85, s. 729).

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(h) the expenses covered by the allowance may not always correspond to the expenses actually incurred by the employee.

## Example

4. An employer in the construction sector pays \$125 each year to all his employees for the purchase of tools necessary for their work. The employer does not require that the employees supply any proof of purchase or that they prove that they did indeed acquire new tools.

Such an amount constitutes an expense allowance for the purposes of section 211 of the AQST.

## Conditions and presumptions respecting ITR claims

5. For an employer to be entitled to claim an ITR in respect of an expense allowance paid to an employee, the conditions provided for under the first paragraph of section 211 of the AQST must first be met. These conditions are the following:

(a) the allowance is paid either for supplies all or substantially all of which are taxable supplies, other than zero-rated supplies, of property or services acquired in Québec by the employee in relation to an activity engaged in by the employer, or for the use in Québec of a motor vehicle in relation to activities engaged in by the employer;

(b) an amount in respect of the allowance is deductible in computing the income of the employer for the purposes of the Taxation Act (R.S.Q., c. I-3), or would be so deductible if the employer were a taxpayer under that Act and the activity were a business;

(c) in the case of an allowance in respect of which paragraph *e* of section 39 or section 40 of the Taxation Act would apply if the allowance were reasonable, the employer rightly considered, at the time of paying that allowance, that it was a reasonable allowance for the purposes of those provisions.

6. Where the conditions set out under section 211 of the AQST are met, the following presumptions apply:

(a) the employer is deemed to have received the supply of a property or service;

(b) any consumption or use of the property or service by the employee is deemed to be consumption or use by the employer;

(c) the employer is deemed to have paid, at the time of payment of the allowance, the tax on the supply.

7. In this context, the employer may claim an ITR in accordance with the rules and in taking into account generally applicable restrictions. If the employer is a large business, it must also take into account the ITR restrictions to which large businesses are subject.

8. ITR restrictions apply to an expense allowance, or to a portion of an expense allowance, that can reasonably be attributed to a property or service covered by those restrictions.

9. Under certain circumstances, an employer that is a large business may use the simplified method for large businesses (LB simplified method) to calculate the ITR to which it is entitled in respect of the expenses it reimburses to employees. If the employer uses the LB simplified method in respect of those expenses, it must also use that method in respect of the expense allowances it pays, as long as the conditions provided for under section 211 of the AQST are met (see the current version of interpretation bulletin TVQ. 211-5).

## ONE OR MORE ALLOWANCES

10. A review of the conditions provided for under section 211 of the AQST must be made for each allowance paid by the employer.

11. The employer's administrative documents (the employer's policy regarding allowances, the collective agreement and any decrees, administrative notes,



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memorandums, etc.) must be examined in order to determine the number of allowances paid.

**12.** As a rule, where a single allowance is paid to cover several types of expenses, it is not possible to conclude, pursuant to section 211 of the AQST, that several allowances were paid.

### **Example**

**13.** The collective agreement of a small or medium-sized business (SMB) provides for the payment of a monthly allowance of \$1,500 for the employee's accommodation for more than one month in a private facility and the meals of the employee. The employer claims that two allowances are paid, one for food and the other for lodging.

In this context, given the all-inclusive amount provided for under the collective agreement, the Ministère du Revenu considers that a single allowance is paid.

### **ALL OR SUBSTANTIALLY ALL SUPPLIES ARE TAXABLE SUPPLIES**

**14.** For an employer to be deemed to have received a supply and paid the tax, section 211 of the AQST requires that the allowance be paid for supplies all or substantially all of which (90% or more) are taxable supplies, other than zero-rated supplies.

**15.** An allowance is an amount of money placed at the employee's disposal, the use of which does not need to be justified. Thus, the employee is not required to provide evidence in the form of receipts or other documentation showing that the amount was actually spent.

**16.** In this context, the employer must be able to establish that the allowance is paid to allow for the acquisition of supplies 90% or more of which are taxable supplies other than zero-rated supplies.

**17.** It is therefore important to consider the employer's intention (that is, the purpose for which the amounts were paid), rather than what the employee actually spent the money on, in order to verify whether this condition is met.

**18.** To determine whether the allowance is paid for taxable supplies other than zero-rated supplies, it may be necessary to take into account certain factors such as the inability to acquire such supplies where the employee is posted, the amount of the allowance, the possibility for the employee to claim the full reimbursement of the expense, the length of the posting, available lodging and its cost, the probable use of the allowance given all the allowances and reimbursements available to the employee, etc.

### **Examples**

**19.** The three examples below illustrate this point.

#### **Example 1**

An employer pays an employee a meal allowance. There is a grocery store but no restaurant where the employee works.

In this case, the Ministère du Revenu cannot consider that an allowance was paid for the acquisition of taxable supplies other than zero-rated supplies.

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## Example 2

An allowance of \$50 a day is paid to an employee from Québec City for his meals and lodging during the period he is posted in Montréal. Considering the average cost of a room in Montréal, the allowance is not enough to allow the employee to sleep at a hotel and eat in restaurants.

In this context, the Ministère cannot conclude that the allowance is paid for supplies 90% or more of which are taxable supplies other than zero-rated supplies.

## Example 3

An allowance is paid to an employee for work on a remote construction site. The place of work is so isolated that the employee must provide his own lodging (a trailer) and no food services are available.

In this case, the Ministère considers that the allowance is not used to acquire taxable supplies other than zero-rated supplies.

**20.** The facts must therefore be examined in order to determine whether an employer pays an employee an allowance for supplies all or substantially all of which are taxable supplies other than zero-rated supplies.

## **ITR RESTRICTIONS**

**21.** Where the conditions provided for under section 211 of the AQST are met and a portion of the expense allowance is paid for the acquisition of property or services covered by an ITR restriction, all the expenses must be broken down for the purpose of determining the proportion of the allowance that can reasonably be attributed to the acquisition of such property or services.

## **Examples**

**22.** The two examples below illustrate this point.

## Example 1

An employer (a small business) pays an allowance to an employee for lodging and meals (which in this example are taxable supplies other than zero-rated supplies). The conditions provided for under section 211 of the AQST having been met, the employer is entitled to an ITR, subject to the restrictions provided for under the AQST.

The portion of the allowance that can reasonably be attributed to meals will therefore be subject to the 50% limit provided for under section 457.1 of the AQST and the maximum amount provided for under section 457.1.4 of the AQST.

## Example 2

An employer (a large business) pays an allowance to an employee for lodging and meals (which in this example are taxable supplies other than zero-rated supplies). The conditions provided for under section 211 of the AQST having been met, the employer is entitled to an ITR, subject to the restrictions provided for under the AQST.

The employer is entitled to an ITR for the portion of the allowance that can reasonably be attributed to lodging. However, the employer is not entitled to an ITR for the portion of the allowance that can reasonably be attributed to meals, where the meals are covered by the ITR restriction provided for under paragraph 6 of section 206.1 of the AQST.

If the employer uses the LB simplified method, the rules set out in point 9 above must be taken into account.

## **ALLOWANCES PAID IN THE CONSTRUCTION INDUSTRY**

**23.** Several sectors of activity in the construction industry have their own collective agreements. It is therefore important to examine the terms of the



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applicable collective agreement for each allowance payable. These terms may vary from one collective agreement to another, which can lead to differences in the application of section 211 of the AQST, depending on the circumstances.

### **Example: Compensation for travel expenses**

**24.** A sector-based collective agreement provides that an employer must pay a compensation for travel expenses to all employees whose residence is situated 120 kilometres or more from the job site to which they are assigned. The compensation is paid for room and board expenses, transportation expenses and travel time. The amount allocated for room and board expenses is a daily allowance. The amount allocated for transportation expenses represents the equivalent of the fare of a return trip paid to the public transportation system chosen by the employer for the employee to reach the job site from the employee's residence, upon the employer's request. The amount allocated for travel time is a remuneration that is determined according to the employee's hourly rate. The compensation for travel expenses must be paid separately from the employee's salary and the employee has no document to file in order to receive this payment.

**25.** Given the description of the compensation for travel expenses provided in the collective agreement, the Ministère du Revenu considers that, for the purposes of section 211 of the AQST, the compensation includes three separate expense allowances – an allowance for room and board, an allowance for transportation expenses and an allowance for travel time – despite the fact that the compensation is paid as a single amount.

Allowance for room and board

**26.** Where the conditions provided for under section 211 of the AQST are met, the employer may break down the allowance paid for room and board expenses and claim an ITR for the portion of the allowance that can reasonably be attributed to lodging. However, with regard to the portion of the allowance that can reasonably be attributed to meals, the following conditions apply:

- if the employer is a large business, it is not entitled to an ITR if the meals are covered by the ITR restriction provided for under paragraph 6 of section 206.1 of the AQST;
- if the employer is a large business and uses the LB simplified method, the employer must take into account the rules set out in point 9 above;
- if the employer is an SMB, the portion of the allowance attributed to meals will be subject to the 50% limit provided for under section 457.1 of the AQST and to the maximum amount provided for under section 457.1.4 of the AQST.

Allowance for transportation expenses

**27.** Since the amount allocated for transportation expenses is equal to the fare of a return trip paid to the public transportation system chosen by the employer for the employee to reach the job site from his or her residence, upon the employer's request, it constitutes an allowance paid to acquire a transportation service. An ITR can therefore be claimed for the tax paid at the time of acquisition, pursuant to section 211 of the AQST.

**28.** Since this is not an allowance paid for the use of a road vehicle, section 206.1 of the AQST does not apply.

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Allowance for travel time

**29.** Where the employer pays an allowance for travel time, the amount is not paid for the acquisition of taxable supplies other than zero-rated supplies. The presumption provided for under section 211 of the AQST therefore does not apply.

**30.** The employer cannot claim an ITR with respect to such an allowance.

## **PARTIAL TAX REBATE**

**31.** Where a person that is a selected public service body, a qualifying non-profit organization or a charity pays an expense allowance after July 31, 1995, and the conditions provided for under section 211 of the AQST are met, the presumptions established under that section apply and the partial tax rebate will be determined by applying the factor in force under that section to the total amount of allowances paid and then multiplying the result obtained by the percentage provided for under section 386 of the AQST.

## **PARTNERSHIPS, CHARITIES AND PUBLIC INSTITUTIONS**

**32.** This bulletin also applies (with such adjustments as are necessary) to an expense allowance paid by a partnership to one of its members, as well as to an expense allowance paid by a charity or public institution to a volunteer.