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Consumer Taxes

Number: TVQ. 327.2-1/R1

Date: December 29, 2011

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Act(s): *Act respecting the Québec sales tax (R.S.Q., c. T-0.1), sections 327.1 and 327.2*

Subject: **Drop Shipment Certificate**

This version of interpretation bulletin TVQ. 327.2-1 replaces the version of April 30, 2001. The bulletin was revised in order to take into account the legislative amendments that have been made since its publication and to clarify certain elements. It has effect in respect of a supply all the consideration for which becomes due after February 28, 2000, or is paid after that date without having become due.

This bulletin explains how section 327.2 of the *Act respecting the Québec sales tax (AQST)* applies in respect of persons authorized to issue a drop shipment certificate.

DEFINITION

1. In this bulletin, the term “non-resident person” means a person that is not resident in Québec and is not registered under Division I of Chapter VIII of Title I of the AQST.

APPLICATION OF THE ACT

2. Section 327.1 of the AQST sets forth a specific rule that applies in a case where a registrant, under an agreement between the registrant and a non-resident person, makes a taxable supply in Québec of corporeal movable property (CMP) by way of sale, or a taxable supply in Québec of a service of manufacturing or producing CMP, to the non-resident person, or acquires physical possession of CMP, other than property of a person that is resident in Québec or is a registrant, for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person and where, under the agreement, the registrant at any time causes physical possession of the property to be transferred, at a place in Québec, to a third person (the consignee) or to the non-resident person.

3. Under the specific rule, the registrant is then deemed to have made to the non-resident person, and the non-resident person is deemed to have received from the registrant, a taxable supply of property that is deemed to have been made for consideration, which becomes due and is paid at that time, equal to,

—where the registrant has caused physical possession of the property to be transferred to a consignee to which the non-resident person has supplied the property for no consideration, nil; and

—in any other case, the fair market value of the property at that time.

4. Furthermore, where the registrant made a supply of a service of manufacturing or producing the property or of a commercial service in respect of the property to the non-resident person, except in the case of a supply of a service of storing or shipping the property, the registrant is deemed not to have made that supply of a service.

5. The specific rule does not apply if the non-resident person is a consumer of the property or service supplied by the registrant under the agreement.

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DROP SHIPMENT CERTIFICATE

6. Furthermore, the specific rule is not applied where a drop shipment certificate is given to the registrant by the consignee.

7. Thus, section 327.2 of the AQST provides that the specific rule set forth in section 327.1 of the AQST is not applied where all of the following conditions hold true:

—a registrant, under an agreement between the registrant and a non-resident person,

- makes a taxable supply in Québec of CMP by way of sale, or a taxable supply in Québec of a service of manufacturing or producing CMP, to the non-resident person, or acquires physical possession of CMP, other than property of a person that is resident in Québec, for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person, and

- causes physical possession of the property to be transferred, at a place in Québec, to a third person (the consignee) that is registered for the QST;

—the non-resident person is not a consumer of the property or service supplied by the registrant under the agreement; and

—the consignee gives to the registrant, and the registrant retains, a certificate that

- states the consignee's name and QST registration number, and

- acknowledges that the consignee, on taking physical possession of the property, is assuming liability to pay or remit any amount that is or may become payable or remittable by the consignee under section 327.1 or 18 of the AQST in respect of the property.

8. Where the exception in respect of the drop shipment certificate applies, except in the case of a supply of a service of shipping the property, any supply referred to in the foregoing points is deemed to have been made outside Québec.

DISCUSSION

9. Section 327.2 of the AQST constitutes a relieving provision. It relieves the registered supplier of the supplier's obligation to collect the tax under section 327.1 of the AQST in a case where the consignee is registered and gives a certificate to the supplier. Issuance of the drop shipment certificate frees the non-resident person from liability to pay the tax on property acquired from a registrant in Québec and transfers the eventual liability to pay the tax to a consignee that takes physical possession of the property in Québec. By issuing a drop shipment certificate, the consignee agrees to pay or remit the tax that is or may become payable or remittable under section 327.1 or 18 of the AQST in respect of the property.

10. Nevertheless, the recipient of a supply made outside Québec may be liable to pay the Minister a tax in respect of the property calculated at the applicable rate, if any, on the value of the CMP that the recipient acquires outside Québec but brings into Québec, pursuant to section 17 of the AQST.

11. A consignee that may be required to remit the tax under section 327.1 of the AQST is a registrant that acquires physical possession of the CMP for the purpose of making a taxable supply of a commercial service in respect of the property to the non-resident person.

12. A consignee that is required to pay the tax under section 18 of the AQST is a registrant that acquires the property from the non-resident person where the property is not acquired exclusively for consumption, use or supply in the course of the registrant's commercial activities. As stipulated in paragraph (3) of section 18 of the AQST, a registrant that acquires a supply of CMP



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made by a non-resident person and gives a drop shipment certificate to another registrant that transferred physical possession of the property to the first registrant must pay the tax in respect of the supply if the property is not acquired for consumption, use or supply exclusively in the course of the commercial activities of the recipient.

13. Consequently, it is clear that the consignee referred to in section 327.2 of the AQST can only be one of those two persons. In all cases, the consignee is therefore a registrant that has a contractual relationship with the non-resident person with respect to the property that is transferred to the consignee by another registrant on behalf of the non-resident person.

Example

14. A registrant that is resident in Québec (Corporation A) sells property to a non-resident person that is not registered (Corporation B). Corporation B sells the property to a registrant that is resident in Québec (Corporation C). Corporation C sells that same property to its customer (Corporation D), which is also a registrant that is resident in Québec.

15. In such a situation, Corporation D does not acquire physical possession of the property for the purpose of supplying a commercial service and therefore cannot be in a situation where it could be required to pay the tax under section 327.1 of the AQST. Furthermore, since the supply to Corporation D is not made by the non-resident person, Corporation D cannot be in a situation referred to in paragraph (3) of section 18 of the AQST. Corporation D therefore cannot issue a drop shipment certificate to Corporation A.