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Consumer Taxes

Number: TVQ. 80.2-2/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 80.2,¹ 199 and 206.¹²*

Subject: **The Supply of Long-Distance Services by Certain Hotel Establishments**

This version of interpretation bulletin TVQ. 80.2-2 replaces the version of May 31, 2000, in order to clarify entitlement to input tax refunds for a “large business” (essentially a business with sales of more than \$10 million³) in respect of certain telecommunication services.

This bulletin explains how the *Act respecting the Québec sales tax* (AQST) applies in respect of input tax refunds (ITRs) related to the supply of long-distance services by certain hotel establishments.

DESCRIPTION OF THE SITUATION

1. Certain telephone companies, acting as telephone service suppliers, offer hotel operators the possibility of selling long-distance telephone services to their establishment's customers. To do so, the telephone company and the hotel establishment sign an agreement under which the hotel rents a certain number of telephone lines that are used both by the hotel and by its customers.
2. The hotel, as reseller of the long-distance telephone services that are supplied to it by the telephone company, assumes responsibility for all the long-distance charges incurred by its customers. These charges are billed to the hotel's account by the telephone company.
3. The hotel operator is free to set the price to be charged to the hotel's customers for the communication. Thus, when a customer makes a long-distance call, the hotel's private telephone exchange (PBX) or any other

equivalent system and the hotel's computer system allow the hotel operator to determine the cost of the call made by the customer that will be billed to the hotel by the telephone company (example: \$5.00 before taxes).

4. The hotel then bills the customer for that same amount, after adding a profit margin (50% for example), the goods and services tax (GST) and the Québec sales tax (QST) computed on the total amount (example: $\$5.00 + 50\% = \$7.50 +$ applicable GST and QST).

THE ACT

5. Section 199 of the AQST provides as a general rule that every person who is a registrant and who acquires property or a service for consumption, use or supply in the course of the person's commercial activities may claim an ITR on the QST paid in respect of such property or service.
6. However, under the transitional provisions relating to section 206.1 of the AQST, certain property and services, including telephone services (other than the supply of a 1-800 or 1-888 service or other telephone service having an identity code that is the extension of

¹ Section 80.2 of the *Act respecting the Québec sales tax* (AQST) was repealed on August 1, 1995, but applies to certain telecommunication services acquired by large businesses. (S.Q. 1995, c. 63, ss. 341, 350.)

² Section 206.1 of the AQST was repealed on August 1, 1995, for small and medium-sized businesses and was supposed to be repealed on November 30, 1996, for large businesses. (S.Q. 1995, c. 63, s. 350.) However, for large businesses generally, the repeal of that section was at first postponed until March 31, 1997 (*Budget Speech and Additional Information*, May 9, 1996, Appendix A, p. 11), and was subsequently postponed indefinitely (*Budget Speech and Additional Information*, March 25, 1997, Appendix A, pp. 204 05 and S.Q. 1997, c. 85, s. 729).

³ Interpretation bulletin TVQ. 206.1-9, “Qualification as a small or medium-sized business or as a large business”, dated December, 29, 2005, provides details in that regard.

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such a service) and telecommunication services, do not give entitlement to an ITR when they are acquired by a “large business”, except where, in particular, no tax would have been payable in respect of such a supply under section 80.2 of the AQST if that section had not been repealed.

7. Moreover, before it was repealed on August 1, 1995, section 80.2 of the AQST provided that no tax was payable in respect of the supply of a telecommunication service made to a person operating such a service if the service was to be used directly and solely for the purpose of making a taxable supply, other than a zero-rated supply, of another telecommunication service by that person.

APPLICATION OF THE ACT

TELEPHONE LINE RENTAL CHARGES

8. The supply of telephone lines by the telephone company to the hotel constitutes the supply of a telecommunication service that is subject to the restrictions on obtaining an ITR, except where no tax would have been payable in respect of that supply under section 80.2 of the AQST if that section had not been repealed.

9. In the situation described above, the telecommunication service is not acquired by the hotel to be used directly and solely for the purpose of making a taxable supply of another telecommunication service, since the lines are used both by the hotel and by its customers. For that reason, the hotel cannot claim an ITR in respect of the acquisition of telephone lines if it qualifies as a “large business”.

CHARGES FOR LONG-DISTANCE CALLS MADE BY THE HOTEL

10. The charges for long-distance calls made by the hotel constitute consideration for a telecommunication service. Such a service is also subject to the restrictions

on obtaining an ITR, except where no tax would have been payable in respect of that supply under section 80.2 of the AQST if that section had not been repealed.

11. Consequently, when the hotel acquires a telecommunication service for its own use, it cannot claim an ITR in respect of such a service if it qualifies as a “large business”.

CHARGES FOR LONG-DISTANCE CALLS MADE BY THE HOTEL’S CUSTOMERS

12. The charges for long-distance calls made by the hotel’s customers constitute consideration for a telecommunication service. Such a service is also subject to the restrictions on obtaining an ITR, except where no tax would have been payable in respect of that supply under section 80.2 of the AQST if that section had not been repealed.

13. The supply of such a service constitutes the supply of a telecommunication service acquired by the hotel to be used *directly and solely* for the purpose of making a supply of another telecommunication service for the benefit of its customers.

14. Consequently, the supply of such a service would be subject to section 80.2 of the AQST if that section had not been repealed, and the hotel may claim an ITR in respect of such a telecommunication service even if it qualifies as a “large business”.