

NATIONAL ASSEMBLY
Thirty-fourth Legislature, second session

1993, chapter 79
**AN ACT TO AMEND THE TOBACCO TAX ACT,
THE ACT RESPECTING THE MINISTÈRE DU REVENU
AND OTHER FISCAL LEGISLATION**

Bill 90

Introduced by Mr Raymond Savoie, Minister of Revenue

Introduced 13 May 1993

Passage in principle 11 June 1993

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Assented to 17 December 1993

Coming into force: 17 December 1993

Acts amended:

Tobacco Tax Act (R.S.Q., chapter I-2)

Act respecting the Ministère du Revenu (R.S.Q., chapter M-31)

Fuel Tax Act (R.S.Q., chapter T-1)

Act respecting the Québec sales tax and amending various fiscal legislation (1991, chapter 67)





CHAPTER 79

An Act to amend the Tobacco Tax Act, the Act respecting the Ministère du Revenu and other fiscal legislation

[Assented to 17 December 1993]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TOBACCO TAX ACT

c. I-2, s. 2,
am. **1.** (1) Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2) is amended

(1) by replacing the definition of the word “package” by the following definition:

“package” “package” means a package, a carton or any other container of tobacco, and includes a hand of tobacco;”;

(2) by replacing the definition of the word “tobacco” by the following definition:

“tobacco” “tobacco” means tobacco in any form in which tobacco is consumed, and includes snuff, but does not include leaf tobacco which has not been processed beyond the drying stage, fragments of such tobacco leaves, or cigars sold at a retail price of \$0.05 or less each;”;

(3) by striking out the definition of the expression “raw leaf tobacco”;

(4) by inserting, before the definition of the expression “loose tobacco”, the following definition:

“leaf tobacco” “leaf tobacco” means leaf tobacco and fragments of tobacco leaves sold in packages;”;

(5) by replacing the definition of the expression “loose tobacco” by the following definition:

“loose tobacco”

“ “loose tobacco” means any cut, chopped or granular tobacco sold in packages, but does not include cigarettes, cigars, leaf tobacco and rolls of tobacco or any other pre-rolled tobacco products designed for smoking;”;

(6) by replacing the definition of the expression “wholesale vendor” by the following definition:

“wholesale vendor”

“ “wholesale vendor” means any person who, in Québec, sells tobacco for the purpose of resale;”;

(7) by replacing the definition of the expression “retail sale” by the following definition:

“retail sale”

“ “retail sale” means a sale made to a person for consumption by him or by any other person at his expense but does not include a sale for the purpose of resale or a sale of leaf tobacco designed to enter into the composition of tobacco intended for sale;”.

(2) This section has effect from 24 April 1993. However, for the period beginning on 24 April 1993 and ending on 20 May 1993,

(a) section 2 of the Tobacco Tax Act, amended by this section, shall read as though the definition of the expression “leaf tobacco” did not appear;

(b) the definition of the expression “loose tobacco” set forth in the said section shall read as follows:

“loose tobacco”

“ “loose tobacco” means leaf tobacco, fragments of tobacco leaves and cut, chopped or granular tobacco sold in packages, but does not include cigarettes, cigars and rolls of tobacco or any other pre-rolled tobacco products designed for smoking;”;

(c) the definition of the expression “retail sale” set forth in the said section shall read as follows:

“retail sale”

“ “retail sale” means a sale made to a person for consumption by him or by any other person at his expense but does not include a sale for the purpose of resale or a sale of leaf tobacco or of fragments of tobacco leaves designed to enter into the composition of tobacco intended for sale;”.

c. I-2, s. 4,
am.

2. Section 4 of the said Act is amended by replacing paragraph c by the following paragraph:

“(c) furnish such security as may be required in section 17.2, 17.3 or 17.4 of the Act respecting the Ministère du Revenu;”.

c. 1-2,
s. 6.1, am.

3. Section 6.1 of the said Act is amended by replacing paragraph *e* by the following paragraph:

“(e) furnish such security as may be required in section 17.2, 17.3 or 17.4 of the Act respecting the Ministère du Revenu;”.

c. 1-2,
s. 6.3,
replaced
Validity and
renewal

4. Section 6.3 of the said Act is replaced by the following section:

“**6.3** The period of validity of the permit is two years. On expiry of the permit, the Minister or any other person authorized by him shall renew it for the same period, subject to sections 17.5 and 17.6 of the Act respecting the Ministère du Revenu.”

c. 1-2,
ss. 7.2-
7.5, 7.7
and 7.8,
repealed

5. Sections 7.2 to 7.5, 7.7 and 7.8 of the said Act are repealed.

c. 1-2,
s. 7.9, am.

Specific
require-
ments

6. Section 7.9 of the said Act is amended by adding the following paragraph:

“The Government may, by regulation, determine categories of persons and determine, with regard to one or more such categories of persons, specific requirements for the manifest or way-bill, or exempt any such category of persons from the requirements set out in the first paragraph.”

c. 1-2, s. 8,
am.

7. (1) Section 8 of the said Act, amended by section 3 of chapter 16 of the statutes of 1991 and replaced by section 547 of chapter 67 of the statutes of 1991, is amended

(1) by inserting, after paragraph *b*, the following paragraph:

“(b.1) \$0.0146 per gram of any leaf tobacco;”;

(2) by replacing paragraph *d* by the following paragraph:

“(d) \$0.0735 per gram of any tobacco other than cigarettes, loose tobacco, leaf tobacco or cigars.”

(2) This section has effect from 21 May 1993.

c. 1-2,
s. 9.2,
added

8. The said Act is amended by inserting, after section 9.1, the following section:

Illegally-
acquired
tobacco

“**9.2** No person ordinarily residing or carrying on business in Québec may have in his possession tobacco intended for consumption by him or by any other person at his expense unless the package is identified in accordance with section 13.1 for tobacco intended for retail sale in Québec, except if the tobacco has been legally brought into Québec.”

c. I-2,
s. 13.1,
replaced

9. Section 13.1 of the said Act is replaced by the following section:

Identifica-
tion of
tobacco

“13.1 Every package of tobacco prescribed by regulation that is intended for retail sale in Québec and that is in Québec must be identified by the persons, in the manner and on the conditions prescribed by regulation.”

c. I-2,
s. 13.2.1,
am.

10. Section 13.2.1 of the said Act is amended by replacing the second paragraph by the following paragraph:

Seals

“The seals shall remain affixed until a judge has granted an authorization under section 13.4 to seize the vending machine and the tobacco found therein or for a period of not more than 15 days if such an authorization is not obtained.”

c. I-2,
s. 13.3, am.

11. Section 13.3 of the said Act is amended

(1) by replacing the first paragraph by the following paragraph:

Inspection
of a vehicle

“13.3 Any member of the Sûreté du Québec, any member of a municipal police force or any person authorized by the Minister for such purposes may, at any place and at any reasonable time, stop a vehicle for inspection where he has reasonable grounds to believe that it contains packages of tobacco, require the owner, driver or person in charge of the vehicle to produce, where applicable, the manifest or way-bill provided for in section 7.9 and the copy of the permit provided for in section 6.2, and examine the identification of the packages of tobacco being transported.”;

(2) by replacing the third paragraph by the following paragraph:

Immobiliza-
tion of a
vehicle

“The vehicle shall not be moved without the authorization of a member of the Sûreté du Québec, a member of a municipal police force or the Minister, as the case may be, until a judge rules on the application referred to in section 13.4, which must be introduced with reasonable dispatch, and until its seizure, where such is the case.”

c. I-2,
s. 13.3.1,
replaced

12. Section 13.3.1 of the said Act is replaced by the following section:

Stopping of
a vehicle

“13.3.1 Any member of the Sûreté du Québec, any member of a municipal police force or any person authorized by the Minister for such purposes may stop a vehicle used to transport packages of tobacco in Québec where he has reasonable grounds to believe that the packages transported are intended for retail sale in Québec and that the purchaser does not hold a registration certificate provided

for in section 3 or the appropriate permit provided for in section 6 or that the packages are not identified in accordance with section 13.1 or that an offence under paragraph *a* of section 14.1 where it refers to section 17.10 is being or has been committed.

Immobiliza-
tion of a
vehicle

The vehicle shall not be moved without the authorization of a member of the Sûreté du Québec, a member of a municipal police force or the Minister, as the case may be, until a judge rules on the application referred to in section 13.4, which must be introduced with reasonable dispatch, and until its seizure, where such is the case.”

c. 1-2,
s. 13.4,
replaced

13. Section 13.4 of the said Act is replaced by the following section:

Search and
seizure

“13.4 A judge of the Court of Québec or a justice of the peace having jurisdiction may, on an *ex parte* application following an information made in writing and under oath by a person who has reasonable grounds to believe that an offence against this Act is being or has been committed and that there is in a place in Québec a thing that may afford evidence of the offence or which is being or has been used for the commission of the offence, authorize in writing any public servant of the Ministère du Revenu, or any other person he designates, to search in that place and to seize and remove therefrom that thing and, for those purposes, to enter any building, receptacle or premises in that place; the public servant or person so authorized may call upon the assistance of a peace officer.

Search with
warrant

Furthermore, any member of the Sûreté du Québec or any member of a municipal police force may apply for a warrant or telewarrant and make a search in accordance with articles 96 to 114 of the Code of Penal Procedure (R.S.Q., chapter C-25.1) with a view to searching for, seizing and removing a thing described in the first paragraph.

Search with
telewarrant

Any public servant of the Ministère du Revenu may also apply for a telewarrant and make a search in accordance with the said articles of the Code of Penal Procedure with a view to searching for, seizing and removing a thing described in the first paragraph.

Seizure
without an
authoriza-
tion

In addition, any member of the Sûreté du Québec, any member of a municipal police force or any public servant of the Ministère du Revenu who has reasonable grounds to believe that an offence against this Act is being or has been committed and that there is in a place in Québec a thing that may afford evidence of the offence or which is being or has been used for the commission of the offence, may also search for, seize and remove that thing without the authorization provided for in the first paragraph, or without having made an

application for a warrant or telewarrant provided for in the second or the third paragraph, as the case may be, if the person in charge of that place consents to the search or in exigent circumstances within the meaning of article 96 of the Code of Penal Procedure.”

c. 1-2,
s. 13.4.1,
replaced

14. Section 13.4.1 of the said Act is replaced by the following section:

Authoriza-
tion

“13.4.1 For the purposes of the first paragraph of section 13.4, the judge may grant his authorization on the conditions he indicates if he is convinced that there are reasonable grounds to believe that an offence against this Act is being or has been committed and that things which may afford evidence of the offence or which are being or have been used in the commission of the offence are in the place indicated in the information.”

c. 1-2,
s. 13.4.2,
am.

15. Section 13.4.2 of the said Act is amended

(1) by replacing the first paragraph by the following paragraph:

Search

“13.4.2 The public servant or the designated person who carries out a search in accordance with the first paragraph of section 13.4 may seize and remove, in addition to what is provided for in that section, any other thing which he believes, on reasonable grounds, constitutes evidence of the commission of the offence described in the information or which he believes has been used in committing the offence, as well as any other thing in plain view to which section 13.4 applies.”;

(2) by replacing the second paragraph by the following paragraph:

Report of
seizure

“The person shall, with reasonable dispatch, report the seizure to the judge who gave the written authorization under section 13.4 or, in his absence, to a judge of the same jurisdiction.”;

(3) by replacing the third paragraph by the following paragraph:

Retention
of things
seized

“The judge may authorize the Minister to retain the things seized if he is convinced that they may constitute evidence of the commission of an offence against this Act or that they have been used in committing the offence and that they have been seized in accordance with this section.”

c. 1-2,
s. 13.4.3,
replaced

16. Section 13.4.3 of the said Act is replaced by the following section:

Custody

“13.4.3 Subject to a release of seizure by the Minister, any thing seized under sections 13.4 and 13.4.2 shall remain in the custody of a person designated by the Minister for that purpose until, in accordance with section 13.5, it is sold or, in accordance with section 13.5.1, it is destroyed or, in accordance with section 15.1, it is confiscated or, in accordance with article 138 of the Code of Penal Procedure (R.S.Q., chapter C-25.1), subject to section 13.7.1, or in accordance with section 13.8, it is returned to a person having a right therein.

Return of
a vehicle
seized

However, the Minister may return a vehicle seized under section 13.4 or 13.4.2 to the person from whom it was seized if that person pays a deposit equal to the sum of the amount of the cash value of the vehicle and of the amount, determined on the day of payment of the deposit, of the costs of seizure and preservation fixed by regulation. Such deposit is payable in cash or in the manner prescribed by regulation, and shall be kept by an authorized person in the manner prescribed by regulation until disposed of according to law.”

c. 1-2,
s. 13.5,
replaced

17. Section 13.5 of the said Act is replaced by the following section:

Sale of
things
seized

“13.5 Notwithstanding sections 13.4 and 13.4.2, where packages of tobacco, a vehicle or a vending machine are or is seized, a judge of the Court of Québec may, upon the application of the Minister, authorize the Minister in writing to sell such packages, vehicle or vending machine or have them sold on the conditions determined in the authorization. An authorization concerning packages of tobacco must also provide for the keeping of samples in sufficient quantity to serve as evidence. Prior notice of not less than one clear day of the application must be served, where their identity is known, on the person from whom the thing was seized and on the persons who claim to have a right in such packages, vehicle or vending machine. The proceeds of the sale, after deduction of the costs, shall be kept by a person authorized by the Minister in the manner prescribed by regulation until disposed of according to law.”

c. 1-2,
s. 13.5.1,
added

18. The said Act is amended by inserting, after section 13.5, the following section:

Destruction
of packages
of tobacco
seized

“13.5.1 Notwithstanding sections 13.4 and 13.4.2, where packages of tobacco are seized and cannot be legally sold at a retail sale in Québec, a judge of the Court of Québec may, upon the application of the Minister, authorize the Minister in writing to destroy the packages or have them destroyed on the conditions determined in the authorization. The authorization must also provide

for the keeping of samples in sufficient quantity to serve as evidence. Prior notice of not less than one clear day of the application must be served, where their identity is known, on the person from whom the packages were seized and on the persons who claim to have a right in such packages.”

c. I-2,
s. 13.6,
replaced

19. Section 13.6 of the said Act is replaced by the following section:

Retention

“13.6 The thing seized under section 13.4 or 13.4.2, the deposit referred to in section 13.4.3 or the proceeds referred to in section 13.5 shall not be retained for more than one hundred and eighty days from the date of seizure, unless proceedings have been instituted or an extension order has been granted.”

c. I-2,
s. 13.7.1,
added

20. The said Act is amended by inserting, after section 13.7, the following section:

Application
for the
return of a
thing seized

“13.7.1 Where, in accordance with the provisions of article 138 of the Code of Penal Procedure (R.S.Q., chapter C-25.1), an application for the return of a thing seized under section 13.4 or 13.4.2 or of the proceeds referred to in section 13.5 is made by a person who claims to have a right therein and who is not the offender, the judge may order the return on the conditions he indicates if he is convinced that, in addition to what is provided for in article 138 of the Code of Penal Procedure, the thing or proceeds need not be retained for the purposes of this Act or that confiscation is not required under section 15.1.

Costs of
seizure

The judge may also, in such a case, order the person to pay the costs of seizure and preservation of the thing fixed by regulation.”

c. I-2,
s. 13.8,
replaced

21. Section 13.8 of the said Act is replaced by the following section:

Return of
the thing
seized

“13.8 The Minister must return the thing seized, the deposit referred to in section 13.4.3 or the proceeds of the sale referred to in section 13.5 to the person from whom the thing was seized, as soon as retention thereof is no longer necessary in the interests of justice.”

c. I-2,
s. 14.2, am.

22. Section 14.2 of the said Act is amended by replacing that which follows paragraph *e* by the following:

“commits an offence and is liable to a fine of not less than the greater of \$2 000 and three times the tax that would have been payable under this Act had the tobacco involved in the offence been sold at a retail sale in Québec and not more than \$500 000 or, notwithstanding

article 231 of the Code of Penal Procedure (R.S.Q., chapter C-25.1), to both that fine and to imprisonment for a term of not more than two years.”

c. I-2, s. 15,
replaced

23. Section 15 of the said Act is replaced by the following section:

Offence and
penalty

“15. Every person who contravenes the provisions of this Act or the regulations, otherwise than as described in sections 9.2, 14, 14.1 and 14.2, is guilty of an offence and is liable to a fine of not less than \$200 and not more than \$5 000.”

c. I-2,
s. 15.1,
replaced

24. Section 15.1 of the said Act is replaced by the following section:

Payment of
the costs of
seizure

“15.1 The judge convicting the defendant of an offence under this Act may, upon the application of the Minister, order the defendant to pay the amount of costs fixed by regulation in relation to the seizure and preservation of any thing seized under section 13.4 or 13.4.2.

Reduction of
the amount
of costs

However, the judge may reduce the amount if he is convinced that the Minister unduly delayed instituting proceedings or caused the commencement of proceedings to be delayed without sufficient cause.

Confiscation
of things
seized

Upon an application of the Minister made within thirty days after a judgment has been rendered in proceedings to impose a penal sanction for an offence under this Act or, in cases where the defendant is deemed to have been convicted of the offence, within ninety days after service of the statement of offence, a judge may also order the confiscation of packages of tobacco seized under section 13.4 or 13.4.2 where the unlawful possession of such packages prevents their return to the person from whom they were seized or to a person who claims to have a right therein, and, in cases where a defendant has been convicted of, or is deemed to have been convicted of, an offence under this Act, in addition to any penalty otherwise prescribed for the offence, the confiscation of any thing seized under section 13.4 or 13.4.2, of the deposit referred to in section 13.4.3 or of the proceeds referred to in section 13.5.

Prior notice

Prior notice of not less than one clear day of an application under this section shall be served on the defendant, on the person from whom the thing was seized and on the persons claiming a right in the thing seized or in the proceeds referred to in section 13.5, except when they are in the presence of the judge.

Destruction
of things
seized

Where the confiscation of packages of tobacco or the proceeds of the sale of such packages as provided in section 13.5 is ordered, the

judge may, at the request of the Minister, authorize the Minister to destroy or dispose of the packages of tobacco or the proceeds of the sale of such packages as provided in section 13.5 for the benefit of community bodies working in the health and social service sector.”

c. I-2,
s. 15.2,
repealed

25. Section 15.2 of the said Act is repealed.

c. I-2,
s. 17.2, am.

26. Section 17.2 of the said Act is amended by replacing the first paragraph by the following paragraph:

Collection
of the tax

“17.2 The holder of a collection officer’s permit shall collect, as a mandatory of the Minister, an amount equal to the tax provided for in section 8 from every person to whom he sells, delivers or causes to be delivered tobacco in a package identified in accordance with section 13.1 or any other package of tobacco intended for retail sale in Québec, unless the delivery of the tobacco is made outside Québec for consumption outside Québec and is authorized by regulation.”

c. I-2,
s. 17.10,
replaced

27. Section 17.10 of the said Act is replaced by the following section:

Identifica-
tion of
cases

“17.10 Every case used in Québec for the sale, delivery, transport or storage of packages of tobacco shall be identified by the persons, in the manner and on the conditions prescribed by regulation.

“case”

For the purposes of this section, “case” means any container or wrapping containing not fewer than 24 cartons of cigarettes and any prescribed case.”

ACT RESPECTING THE MINISTÈRE DU REVENU

c. M-31,
s. 8.2,
added

28. (1) The Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by inserting, after section 8.1, the following section:

Reproduc-
tion of
documents

“8.2 Notwithstanding any other Act, the Minister may, in order to conserve permanent proof of a document required for the purposes of a fiscal law, reproduce on photographic film any document produced by or on behalf of the Minister or any other person exercising the powers of the Minister, or by or on behalf of a person subject to a fiscal law under such a law, provided that the document has been reproduced faithfully in accordance with the directives prescribed by the Minister or by a person designated by him.

Authenticity

The film or a duplicate copy thereof is authentic and has the same force as the original document reproduced, provided it is accompanied

with the sworn statement of the person who supervised the reproduction of the document, attesting to the reliability of the reproduction process and of the reproduction itself.”

(2) This section applies with respect to the reproduction of a document effected after 23 April 1993.

c. M-31,
s. 9, am.

29. Section 9 of the said Act is amended by adding, at the end of the first paragraph, the following sentence: “Such an agreement may authorize that government or body to enter into any agreement with a third person that may facilitate its implementation.”

c. M-31,
s. 9.2,
added

30. The said Act is amended by inserting, after the heading of Division I of Chapter III, the following section:

Agreement
for the
recovery of
tax debts

“9.2 The Minister may, to foster the recovery of any amount owed by any person under a fiscal law, enter into any agreement to establish the terms and conditions relating to payment of the debt.

Require-
ment

Before entering into such an agreement, the Minister may require the debtor to file any document which establishes his financial capacity, the results of any step he has undertaken to obtain a loan or security contemplated in section 10 from a banking or financial institution, or any other information intended to establish his solvency.”

c. M-31,
s. 12.1, am.

31. Section 12.1 of the said Act, replaced by section 12 of chapter 31 of the statutes of 1992, is amended

(1) by adding, at the end of the first paragraph, the following sentence: “Such a charge shall not be less than \$50 nor more than \$10 000.”;

(2) by replacing the third paragraph by the following paragraph:

Cancellation
or reduction
of the
charge

“The Minister may cancel or reduce the charge so calculated if he considers that the charge would not have been so calculated had it not been for an error or negligence attributable to him, or where the amount of the debt which gave rise to the application of the charge is cancelled or reduced”.

c. M-31,
s. 15,
replaced

32. Section 15 of the said Act, replaced by section 562 of chapter 67 of the statutes of 1991, is again replaced by the following section:

Recovery of
tax debts
from third
persons

“15. The Minister may, by notice served or sent by registered or certified mail to a person who is or who will be, within one year following the service or sending of the notice, bound to make a payment to a person owing an amount exigible under a fiscal law,

require that he pay to him, on behalf of his creditor, all or part of the amount that he owes or that he will have to pay to the latter, such payment to be made at the time the amount becomes payable to his creditor.

Secured
creditor

The same rule applies in respect of a payment to be made to the secured creditor of a person owing an amount exigible under a fiscal law or to the transferee of a debt transferred by such person where the payment, if it were not secured, would have to be made to such person."

c. M-31,
s. 15.1, am.

33. Section 15.1 of the said Act, enacted by section 562 of chapter 67 of the statutes of 1991, is amended by replacing the second paragraph by the following paragraph:

Person
becoming
a debtor
within
the year

"The same rule applies where the person is to become the debtor of a banking or financial institution within one year following the service or sending of the Minister's notice."

c. M-31,
s. 15.2, am.

34. Section 15.2 of the said Act, enacted by section 562 of chapter 67 of the statutes of 1991, is amended by replacing the first paragraph by the following paragraph:

Person
other than a
banking or
financial
institution

"15.2 The Minister may, by notice served or sent by registered or certified mail, require that a person other than a banking or financial institution who, within the year following the service or sending of the notice, is to lend or advance an amount to a person owing an amount exigible under a fiscal law or is to pay an amount for or in the name of this person, pay to the Minister, on behalf of such person, all or part of this amount."

c. M-31,
s. 15.3.1,
added

35. The said Act is amended by inserting, after section 15.3, the following section:

Property of
the Crown

"15.3.1 Upon receipt of a notice from the Minister served or sent by registered or certified mail, the amount indicated in the notice as having to be paid to him becomes the property of the Crown and payment thereof to the Minister shall take priority over any other security granted in respect of the amount."

c. M-31,
s. 16.1,
replaced

36. Section 16.1 of the said Act is replaced by the following section:

Powers
concerning
the imple-
mentation of
an agree-
ment for the
collection
of duties

"16.1 The Minister may, for the purposes of an agreement entered into with the Government of Canada under section 9 respecting the collection of the duties provided for by a fiscal law, authorize any person or class of persons holding office with the

Government of Canada or with a third person to whom the agreement applies to exercise the powers conferred on him by law that are required for the carrying out of such an agreement.”

c. M-31,
s. 16.2, am.

37. Section 16.2 of the said Act is amended by replacing the first paragraph by the following paragraph:

Detention
and deposit
of corporeal
property

“16.2 Where a person brings or causes corporeal property to be brought into Québec for which duties provided for by a fiscal law are payable and refuses or fails to file the return required under that law or to obey a request for payment made by a person authorized under section 16.1, the authorized person may detain such property and deposit it at the place specified by the Minister who shall keep it as security until the duties and, where applicable, the maintenance expenses arising from the deposit are paid.”

c. M-31,
ss. 17.2-
17.9, added

38. The said Act is amended by inserting, after section 17.1, the following sections:

Security
exigible
from a non-
resident

“17.2 Every person not resident in Québec who does not have a permanent establishment in Québec and who applies or is required to be registered for the purposes of the Act respecting the Québec sales tax and amending various fiscal legislation (1991, chapter 67) or who applies for the issue of a registration certificate or permit under the Tobacco Tax Act (R.S.Q., chapter I-2) or the Fuel Tax Act (R.S.Q., chapter T-1) shall give and thereafter maintain security, in an amount and a form satisfactory to the Minister, that the person will collect and remit tax as required by such an Act.

Security

“17.3 The Minister may require from any person, as a condition of issue or continuance in force of a registration certificate or permit issued under a fiscal law, security in the amount he may fix, taking into account, where applicable, the amounts that the person is likely to deduct, withhold, collect, remit or pay under a fiscal law within six months of the date on which the security is required, or the amounts the person was required to deduct, withhold, collect, remit or pay under a fiscal law in respect of the six months preceding that date, if the person

(a) has been convicted of an offence against a fiscal law within the preceding five years;

(b) is controlled by a director, officer or other person who has been convicted of an offence against a fiscal law within the preceding five years, or is controlled by a person one of whose directors or officers has been convicted of such an offence within the same period;

(c) is unable, by reason of his financial situation, to assume the obligations arising out of his business;

(d) fails to pay an amount to the Minister that he is required to pay to him under section 1015 of the Taxation Act or section 23 or 24;

(e) has not filed the return required under section 468 of the Act respecting the Québec sales tax and amending various fiscal legislation or the report or form required under section 11.1 or 17.3 of the Tobacco Tax Act, section 13 or 51.2 of the Fuel Tax Act or section 1015 of the Taxation Act;

(f) has held a registration certificate or permit issued under a fiscal law that has been revoked in the 24 months preceding the application; or

(g) is a person one of whose directors or officers is or has been a director or officer of a corporation or a member of a partnership whose registration certificate or permit issued under a fiscal law has been revoked in the 24 months preceding the application.

Additional
security

“17.4 The Minister may, at any time, require additional security if, at that time, the amount of security given is less than the amount that could be fixed at that time according to the terms and conditions provided in section 17.2 or 17.3.

Suspension,
revocation
or non-
issuance of
a registra-
tion certifi-
cate

“17.5 The Minister may suspend or revoke the registration certificate or permit of, refuse to issue a registration certificate or permit to, or refuse to renew a permit issued under a fiscal law to any person who

(a) has been convicted of an offence against a fiscal law within the preceding five years;

(b) is controlled by a director, officer or other person who has been convicted of an offence against a fiscal law within the preceding five years, or is controlled by a person one of whose directors or officers has been convicted of such an offence within the same period;

(c) is unable, by reason of his financial situation, to assume the obligations arising out of his business;

(d) fails to pay an amount to the Minister that he is required to pay to him under section 1015 of the Taxation Act or section 23 or 24;

(e) does not fulfil or ceases to fulfil the requirements for obtaining a registration certificate or for obtaining or renewing a permit;

(f) has not filed the return required under section 468 of the Act respecting the Québec sales tax and amending various fiscal legislation, the report or form required under section 11.1 or 17.3 of the Tobacco Tax Act, section 13 or 51.2 of the Fuel Tax Act or section 1015 of the Taxation Act;

(g) has held a registration certificate or permit issued under a fiscal law that has been revoked in the 24 months preceding the application;

(h) is a person one of whose directors or officers is or has been a director or officer of a corporation or a member of a partnership whose registration certificate or permit issued under a fiscal law has been revoked in the 24 months preceding the application; or

(i) has ceased his activities or has ceased the activity for which the permit was issued.

Restriction

However, in the cases described in subparagraphs *b* and *d* to *h*, the Minister cannot suspend, revoke or refuse to issue the registration certificate unless the Minister required the security referred to in section 17.2, 17.3 or 17.4, as the case may be, from the person and the person failed to comply.

Restriction

In addition, in the cases described in subparagraphs *b* and *c*, the Minister cannot revoke the registration certificate or permit without having first suspended it. Furthermore, in the case described in section 17.6, the Minister cannot revoke the registration certificate or permit without having first suspended it.

Suspension,
revocation
or non-
issuance of
a registra-
tion certif-
icate

“17.6 The Minister may also suspend or revoke the registration certificate or permit of, refuse to issue a registration certificate or permit to, or refuse to renew a permit issued under the Tobacco Tax Act or the Fuel Tax Act to any person who fails to comply with the requirements of this Act or, as the case may be, of the Tobacco Tax Act or the Fuel Tax Act.

Notice of
non-renewal

“17.7 A notice of non-renewal of a permit issued under a fiscal law must be transmitted to its holder by registered or certified mail or personal service within the 60 days preceding the date of expiry of the permit.

Service

“17.8 The suspension of a registration certificate or permit issued under a fiscal law is effective from the date of service of the decision upon the holder. The decision shall be served by personal service or by registered or certified mail.

Other mode of service A judge of the Court of Québec may authorize a mode of service different from those provided for in the first paragraph.

Coming into force of revocation “**17.9** The revocation of a registration certificate or permit issued under a fiscal law is effective from the date of service of the decision upon the holder.

Exception Notwithstanding the first paragraph, in the cases described in subparagraphs *b* and *c* of section 17.5 and in the case described in section 17.6, revocation is effective only upon the expiry of 15 days from service upon the holder of the decision to suspend where the holder has not made representations within six days from receipt of the decision. Revocation is effected by operation of law.

Service In all cases, the decision to revoke shall be served by personal service or by registered or certified mail.

Other mode of service A judge of the Court of Québec may authorize a mode of service different from those provided for in the third paragraph.

Obligation of the holder The holder shall return his certificate or permit to the Minister immediately after being served.”

c. M-31, s. 20, am. **39.** (1) Section 20 of the said Act, amended by section 565 of chapter 67 of the statutes of 1991, is again amended by replacing the second paragraph by the following paragraph:

Separate fund “Any such amount must be kept by the person who deducted, withheld or collected it, distinctly and separately from his own funds and, in the event of a winding-up, assignment or bankruptcy, an amount equal to the amount thus deducted, withheld or collected must be considered to form a separate fund not forming part of the property subject to the winding-up, assignment or bankruptcy, whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds.”

(2) This section applies in respect of any sum mentioned in a proof of claim filed by the Minister of Revenue in a bankruptcy or assignment of property under the Bankruptcy and Insolvency Act (R.S.C., 1985, chapter B-3 as amended by S.C., 1992, chapter 27) after 23 April 1993.

c. M-31, s. 30.1, replaced **40.** Section 30.1 of the said Act, enacted by section 572 of chapter 67 of the statutes of 1991, is replaced by the following sections:

Withholding of a refund “**30.1** The Minister may withhold any amount that he is required to repay to a person if the person has not, at the time the

amount is to be repaid, filed all the returns and reports that he was bound to file under a fiscal law or a regulation made under such a law.

Validity The withholding of such an amount remains valid and binding until the Minister, after examining the statements or returns, has determined whether or not the person owes an amount under a fiscal law.

Interest “**30.2** Notwithstanding any contrary provision of this Act or another Act, where a refund or amount payable or about to become payable has been withheld under section 30.1, no interest is payable on such sum for the period during which the withholding thereof is valid and binding.”

c. M-31,
ss. 31.1.1-
31.1.5,
added
41. The said Act is amended by inserting, after section 31.1, the following sections:

Allocation of an amount payable by a public body to a tax debtor “**31.1.1** Where a person owing an amount exigible under a fiscal law is also the creditor or beneficiary of an amount payable by a public body as defined in section 31.1.4, the Minister may allocate all or part of such amount to the payment of the debt of that person, up to the total of the debt.

Allocation of an amount payable by a public body to a secured creditor of a tax debtor To that end, the Minister may require the payer or his agent to send to him all or part of the amount payable. Such a requirement remains valid and binding in respect of any other amount to be paid to that person by the payer or his agent until the debt of the person is extinguished.

Obligation of a public body “**31.1.2** For the purposes of section 31.1.1, where an amount is to be paid to a legal person by a public body, the body or its agent must inform the Minister thereof in accordance with the terms and conditions prescribed under section 31.1.5.

Applicability of s. 31.1.1 “**31.1.3** Section 31.1.1 does not apply in respect of an amount or part of an amount declared by law to be exempt from seizure or which constitutes an indemnity or the reimbursement of an insured service or any other charge pertaining to an indemnity.

“public bodies” “**31.1.4** For the purposes of section 31.1.1, the term “public bodies” means the Government and its departments, and the bodies, including the persons designated by the National Assembly, listed in the additional notes accompanying the financial statements of the Government published yearly under the Financial Administration Act (R.S.Q., chapter A-6), but does not include bodies designated therein as administering trust funds or as being joint stock companies or agencies of the Government, except the Société immobilière du Québec.

Terms and
conditions of
application

“31.1.5 The Government may make regulations to determine the terms and conditions governing the application of section 31.1.1, the information required under section 31.1.2 and the terms and conditions respecting communication of that information.”

c. M-31,
s. 40, am.

42. Section 40 of the said Act is amended by replacing the first and second paragraphs by the following paragraphs:

Search and
seizure
authorized

“40. A judge of the Court of Québec may, on demand *ex parte* following an information made in writing and under oath by a functionary of the Ministère du Revenu, for all purposes respecting the application of a fiscal law, authorize in writing any functionary of the Ministère du Revenu, or any other person whom he designates, to enter and search, by force, if need be, any building, receptacle or place to search therein for documents, books, registers, papers or other things that may be used as evidence of an offence against a fiscal law or a regulation made by the Government under such law, and to seize and remove such documents, books, registers, papers or other things and keep them until they have been produced in judicial proceedings; the functionary or the person authorized under this section may be assisted by a peace officer.

Information

The functionary who makes the information must have reasonable grounds for believing that the said offence is being or has been committed and that there are in the building, receptacle or place documents, books, registers, papers or other things that may be used as evidence of the offence.”

c. M-31,
s. 40.1, am.

43. Section 40.1 of the said Act is amended by replacing the first paragraph by the following paragraph:

Seizure of
documents

“40.1 The functionary or designated person who enters and searches a building, receptacle or place in accordance with section 40 may seize and remove, in addition to that which is referred to in the said section, the documents, books, registers, papers or other things he believes, on reasonable grounds, to constitute evidence of the commission of an offence against a fiscal law.”

c. M-31,
s. 69.1, am.

44. Section 69.1 of the said Act, amended by section 213 of chapter 64 of the statutes of 1993, is again amended in the second paragraph

(1) by replacing subparagraph *a* by the following subparagraph:

“(a) the Comptroller of Finance, in respect of an application for striking off of a bad debt submitted to him by the Deputy Minister

for the obtaining of a certificate of conformity and in respect of information communicated to him under section 31.1.1.”;

(2) by adding the following subparagraph:

“(e) every functionary, employee or agent of a public body within the meaning of section 31.1.4, and every employee or agent of an agent of such a body, in respect of information communicated to him in the performance of his duties under sections 31 and 31.1.1.”

c. M-31,
ss. 78.1 and
78.2, added

45. The said Act is amended by inserting, after section 78, the following sections:

Service of a
statement of
offence to a
non-resident

“78.1 Where a functionary authorized under section 72.4 ascertains that an offence has been committed against one of the provisions of section 14.1 or 14.2 of the Tobacco Tax Act or of section 42, 42.1, 43, 43.1, 43.2 or 45 of the Fuel Tax Act by the owner or lessee of a vehicle who has no residence, establishment or place of business in Québec, the statement of offence may be served while the offence is being committed by handing over a duplicate copy to such person.

Service to
the person
having
custody or
control of
a vehicle

Notice of
the offence

The statement of offence may also be served by handing over a duplicate copy to any person who, while the offence is being committed, has custody or control of the vehicle.

“78.2 Where a functionary has served a statement of offence to a person referred to in the second paragraph of section 78.1, a notice informing the person who committed the offence of the service of the statement must be sent to him by registered or certified mail, to the residence or establishment of the addressee or, in the case of a legal person, to its head office, one of its establishments or the establishment of one of its agents.

Restriction

A notice sent in accordance with the first paragraph shall not have the effect of extending, restricting or altering any time limit prescribed by a fiscal law or by the Code of Penal Procedure for the carrying out of a thing or for the filing of any document or proceeding prescribed by such a law.”

c. M-31,
s. 82,
replaced

46. Section 82 of the said Act is replaced by the following section:

Proof of
documents

“82. An affidavit of a functionary of the department attesting that he is entrusted with the proper registers and that a document annexed to the affidavit is a document or true copy of a document, made by or on behalf of the Minister or any other person exercising the powers of the Minister, or by or on behalf of a person subject to a fiscal law, or an exact reconstitution of such a document reproduced

in conformity with section 8.2, shall be *prima facie* proof of the nature and content of the document and must be allowed as proof and have the same probative force as the original document if its accuracy has been proved in the ordinary manner.”

c. M-31,
s. 94, am.

47. Section 94 of the said Act is amended by replacing the first paragraph by the following paragraph:

Remission
or refund

“94. The Government, whenever it considers it in the public interest, and to save the public from serious inconvenience or individuals from hardship or injustice, may remit any amount payable or refund any amount paid to the Crown relating to any matter within the powers of the Legislature as well as any forfeiture or pecuniary penalty imposed or authorized to be imposed for any breach of a fiscal law or the provisions governing the management of any public work producing a toll or revenue, except for breaches of the Act respecting liquor permits (R.S.Q., chapter P-9.1), the Act respecting offences relating to alcoholic beverages (R.S.Q., chapter I-8.1) and the Licenses Act (R.S.Q., chapter L-3), notwithstanding that any part of such forfeiture or penalty is by law given to the informer or prosecutor or to any other person.”

c. M-31,
s. 96, am.

48. Section 96 of the said Act, amended by section 606 of chapter 67 of the statutes of 1991 and by section 214 of chapter 64 of the statutes of 1993, is again amended by replacing the second paragraph by the following paragraph:

Security

“The Government may also make regulations to determine the nature, duration and conditions of realization of a security under section 17.2, 17.3 or 17.4 as a condition of issue or continuance in force of a registration certificate or permit issued under a fiscal law.”

FUEL TAX ACT

c. T-1, s. 24,
am.

49. Section 24 of the Fuel Tax Act (R.S.Q., chapter T-1), replaced by section 10 of chapter 15 of the statutes of 1991, is amended by replacing paragraph c by the following paragraph:

“(c) furnish such security as may be required in section 17.2, 17.3 or 17.4 of the Act respecting the Ministère du Revenu;”

c. T-1,
s. 27.1, am.

50. Section 27.1 of the said Act, enacted by section 10 of chapter 15 of the statutes of 1991, is amended by replacing paragraph e by the following paragraph:

“(e) furnish such security as may be required in section 17.2, 17.3 or 17.4 of the Act respecting the Ministère du Revenu;”

c. T-1,
s. 27.3,
replaced

51. Section 27.3 of the said Act, enacted by section 10 of chapter 15 of the statutes of 1991, is replaced by the following section:

Validity and
renewal

“27.3 The period of validity of the permit is two years. On the expiry of the permit, the Minister or any other person authorized by him shall renew it for the same period, subject to sections 17.5 and 17.6 of the Act respecting the Ministère du Revenu.”

c. T-1, ss. 30
to 31.2, 31.4
and 31.5,
repealed

52. Section 30, section 31, replaced by section 10 of chapter 15 of the statutes of 1991, and sections 31.1, 31.2, 31.4 and 31.5 of the said Act are repealed.

c. T-1, s. 39,
am.

53. Section 39 of the said Act, replaced by section 16 of chapter 15 of the statutes of 1991, is amended by replacing the third paragraph by the following paragraph:

Immobiliza-
tion of a
vehicle

“Unless the Minister authorizes otherwise, the vehicle shall not be moved until a judge rules on the application referred to in section 40.1, which must be introduced with reasonable dispatch, and until its seizure, where such is the case.”

c. T-1, s. 40,
am.

54. Section 40 of the said Act, amended by section 17 of chapter 15 of the statutes of 1991, is again amended by replacing the second paragraph by the following paragraph:

Immobiliza-
tion of a
vehicle

“Unless the Minister authorizes otherwise, the vehicle shall not be moved until a judge rules on the application referred to in section 40.1, which must be introduced with reasonable dispatch, and until its seizure, where such is the case.”

c. T-1,
s. 40.1,
replaced

55. Section 40.1 of the said Act, replaced by section 18 of chapter 15 of the statutes of 1991, is again replaced by the following section:

Search and
seizure
authorized

“40.1 A judge of the Court of Québec may, on an *ex parte* application following an information in writing and under oath by a public servant of the department who has reasonable grounds to believe that an offence against this Act is being or has been committed in a place in Québec, authorize in writing any public servant of the department, or any other person he designates, to search in that place and to seize and remove therefrom any thing which may afford evidence of the offence and, for those purposes, to enter any building, receptacle or premises in that place; the public servant or the person authorized may be assisted by a peace officer.”

ACT RESPECTING THE QUÉBEC SALES TAX AND AMENDING VARIOUS FISCAL
LEGISLATION

1991, c. 67,
ss. 413, 414,
419-421,
679 and 680,
repealed

56. Sections 413, 414, 419 to 421, 679 and 680 of the Act respecting the Québec sales tax and amending various fiscal legislation (1991, chapter 67) are repealed.

FINAL PROVISIONS

Proceedings
for the
suspension,
revocation
or cancella-
tion insti-
tuted before
17 Decem-
ber 1993

57. Proceedings for the suspension, revocation or cancellation of a certificate or permit issued under a fiscal law, instituted before 17 December 1993, except proceedings for cancellation instituted under sections 416 to 418 of the Act respecting the Québec sales tax and amending various fiscal legislation, are continued under the provisions of sections 17.5 to 17.9 of the Act respecting the Ministère du Revenu.

Security
required
before
17 Decem-
ber 1993

58. Any security required or deemed to be required by the Minister under a fiscal law before 17 December 1993 in respect of a certificate or permit issued under a fiscal law is deemed to have been required under sections 17.2 to 17.4 of the Act respecting the Ministère du Revenu.

Coming into
force

59. This Act comes into force on 17 December 1993.