

1991, chapter 16
AN ACT TO AMEND THE TOBACCO TAX ACT

Bill 135

Introduced by Mr Raymond Savoie, Minister of Revenue

Introduced 30 April 1991

Passage in principle 16 May 1991

Passage 6 June 1991

Assented to 6 June 1991

Coming into force: on the date or dates fixed by the Government

- 9 October 1991: section 1, where it replaces or enacts the definitions of the words: "manufacturer", "package" and "tobacco", but to the extent that section 13.1 of the Tobacco Tax Act (R.S.Q., chapter I-2), as amended by section 7, uses the words "package" and "tobacco"; "retail vendor" to the extent that section 13.1 of the Tobacco Tax Act (R.S.Q., chapter I-2), as amended by section 7, and section 17.10 of the Tobacco Tax Act (R.S.Q., chapter I-2), as enacted by section 21, apply to a retail vendor; "retail sale" to the extent that section 13.1 of the Tobacco Tax Act (R.S.Q., chapter I-2), as amended by section 7, applies to a retail sale, section 7, section 14 to the extent that it enacts that part preceding paragraph *a* and paragraphs *b* and *e* of section 14.2 of the Tobacco Tax Act (R.S.Q., chapter I-2), and section 21 to the extent that it enacts sections 17.10 and 17.11 of the Tobacco Tax Act (R.S.Q., chapter I-2)
G.O., 1991, Part 2, p. 4045
- 1 March 1992: ss. 1 (except the definitions of the words "manufacturer", "package", "tobacco", "retail vendor" and "retail sale"), 2 to 6, 8 to 13, 14 (except for that part preceding subpar. *a*, *b* and *e* of 1st par. of s. 14.2), 15 to 20, 21 (except for ss. 17.10 and 17.11), 22 to 24
G.O., 1992, Part 2, p. 945

Act amended:

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



CHAPTER 16

An Act to amend the Tobacco Tax Act

[Assented to 6 June 1991]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. I-2,
s. 2,
replaced

1. Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2), amended by section 8 of chapter 7 of the statutes of 1990 and by section 29 of chapter 60 of the statutes of 1990, is replaced by the following section:

Interpreta-
tion

2. In this Act, unless the context indicates a different meaning,

“carrier”

“carrier” means any person who, in Québec, carries out the transport or delivery of tobacco intended for sale and contained in packages that are not identified in accordance with section 13.1;

“collection
officer”

“collection officer” means any person, other than a retail vendor, who sells or delivers tobacco or causes it to be delivered in Québec;

“establish-
ment”

“establishment” means any place in Québec where tobacco is manufactured, packaged, stored, distributed, sold or traded, but does not include vending machines;

“importer”

“importer” means any person who brings tobacco or causes it to be brought into Québec for sale or delivery;

“loose
tobacco”

“loose tobacco” means any 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;

“manufac-
turer”

“manufacturer” means any person who, in Québec, manufactures, produces, mixes, prepares or packages tobacco intended for sale;

“Minister”

“Minister” means the Minister of Revenue;

- “Ministère du Revenu” “Ministère du Revenu” means the Ministère du Revenu du Québec;
- “offence against a fiscal law” “offence against a fiscal law” means an offence against this Act, the Retail Sales Tax Act (R.S.Q., chapter I-1), the Fuel Tax Act (R.S.Q., chapter T-1), the Taxation Act (R.S.Q., chapter I-3), or the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- “package” “package” means a package, a carton or any other container of tobacco;
- “person” “person” means an individual, a firm, a company, a corporation, an association of persons, an estate, a sequestrator, a trustee in bankruptcy, a liquidator, a fiduciary trustee, an administrator or an agent;
- “raw leaf tobacco” “raw leaf tobacco” means the unmanufactured tobacco, or the leaves and stems of the plant;
- “retail sale” “retail sale” means a sale made to a person for consumption by him or by any other person at his expense, and not for resale;
- “retail vendor” “retail vendor” means any person who, in Québec, sells tobacco by retail sale;
- “sale” “sale” includes ordinary contracts of sale and exchanges;
- “sale price”
“purchase price” “sale price” or “purchase price” means a price in money, also the value of services rendered or other considerations or prestations accepted by the vendor as price or value of the thing given, including an amount equal to the tax that would be paid or payable under Part IX of the Excise Tax Act (Statutes of Canada) if that tax were calculated only on the preceding elements of the sale price or purchase price, determined without reference to the input tax credit provided for in that Part that would relate to the thing covered by the contract of sale;
- “storer” “storer” means any person, other than a person prescribed by regulation or a carrier, who, in Québec, warehouses, stores, holds, keeps or preserves, for any purpose, tobacco contained in a package not identified in accordance with section 13.1;
- “tobacco” “tobacco” means tobacco in any form in which tobacco is consumed, and includes snuff, but does not include cigars sold at a retail price of \$0.05 or less each and raw leaf tobacco;

“vehicle” “vehicle” means any property propelled, pushed or drawn otherwise than by human muscular power, including a vessel, an aircraft, a railway locomotive and a railway car;

“vending machine operator” “vending machine operator” means any person who sells tobacco by retail sale by means of a vending machine;

“vendor” “vendor” includes both wholesale vendor and retail vendor;

“wholesale vendor” “wholesale vendor” means any person who, in Québec, sells tobacco for the purpose of resale, whether manufactured by himself or by any other person.”

c. I-2,
ss. 3-7,
replaced

2. The said Act is amended by replacing Division II by the following division:

“DIVISION II

“REGISTRATION CERTIFICATES AND PERMITS

“§ 1.—*Registration certificates*

Registra-
tion certi-
ficate

3. No person may sell or deliver tobacco in Québec unless a registration certificate has been issued to him under this Act and is in force at that time.

Registra-
tion certi-
ficate

Manufacturers, importers, carriers and storers have the same obligation.

Require-
ments

4. To obtain a registration certificate, a person shall

(a) apply to the Minister, on the form prescribed by the Minister, and provide the information prescribed by regulation;

(b) attach to his application, using the form prescribed by the Minister for that purpose, a declaration containing the address of each establishment he intends to operate or cause to be operated by a third person, and provide any other information prescribed by regulation;

(c) furnish such security as the Minister may require under section 7.7 or 7.8;

(d) fulfil such other conditions and furnish such other documents as may be required by this Act or by regulation.

Issue of
registra-
tion certi-
ficate

5. The registration certificate shall be issued by the Minister or by any other person authorized by the Minister. It shall be posted at the chief place of business of its holder in Québec and is not transferable.

Operation of establishment **“5.1** The holder of a registration certificate shall inform the Minister by registered or certified mail before commencing the operation of an establishment not listed in the declaration filed under section 4.

Changes The holder shall also immediately inform the Minister of any change causing the information provided under section 4 or this section to be inaccurate or incomplete.

Acquisition of establishment In the case of acquisition of an establishment, the transferee shall provide the Minister with his name and address, the address of the establishment and the name and address of the transferor. In the case of transfer of an establishment, the transferor shall provide the Minister with his name and address, the address of the establishment and the name and address of the transferee.

“§ 2.—Permits

Permit **“6.** Every person who, in Québec,

- (a) is a collection officer;
- (b) is an importer;
- (c) is a manufacturer;
- (d) is a storer;
- (e) is a vending machine operator;
- (f) is a carrier,

shall hold a permit issued for that purpose under this Act, unless he is exempt from this requirement by regulation.

Requirements **“6.1** To obtain a permit, a person shall

- (a) apply therefor to the Minister on the form prescribed by the Minister and provide the information prescribed by regulation;
- (b) hold a registration certificate issued under this Act;
- (c) transmit the declaration required by section 4 and comply with the provisions of section 5.1, where applicable;
- (d) designate an agent in accordance with section 7.6, if he has no residence or place of business in Québec;
- (e) furnish such security as the Minister may require pursuant to section 7.7 or 7.8;

(f) provide, where applicable, the address of the establishment where he intends to use the permit;

(g) furnish, if he is a vending machine operator, the number of vending machines he intends to operate and the address of the place where each vending machine will be located and, if he is not the owner of these vending machines, the name and address of the owner;

(h) fulfil such other conditions and furnish such other documents as may be required by law or by regulation.

6.2 The permit shall be issued by the Minister or by any other person authorized by him. It shall be kept at the chief place of business of the holder in Québec, and a copy of the permit shall be posted in each establishment operated under it.

Where a permit is issued for the transport of tobacco, its holder shall keep a copy of it in each vehicle used for that purpose. In addition, if the holder has no establishment in Québec, he must keep a copy in each vehicle of each permit he holds pursuant to this Act.

Every vending machine operator shall post his name and permit number on each vending machine, according to the modalities prescribed by regulation.

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 section 7.2.

6.4 Notwithstanding section 6.3, the Minister or any other person authorized by him may issue a temporary permit valid for a period of six months to any person having no residence, establishment or place of business in Québec.

The permit may be renewed for the same period provided that the holder applies therefor in accordance with the terms and conditions set forth in paragraph *a* of section 6.1, between the sixtieth and thirtieth days preceding the date of expiry of the permit and provided he fulfils the other conditions set forth in section 6.1.

6.5 The permit is not transferable and shall not be used except by the holder and for the activity mentioned in it.

6.6 A permit holder shall inform the Minister immediately upon ceasing his activities or upon any change causing the information provided with the application for or at the time of the renewal of his permit to be inaccurate or incomplete.

Amalgama-
tion, sale,
transfer

A permit holder shall also inform the Minister immediately of any amalgamation, sale or transfer of his firm and of any change in his firm name.

“§ 3.—*Miscellaneous provisions*

Registra-
tion certi-
ficate

“7. No person may sell or deliver tobacco in Québec to a vendor who does not hold a registration certificate and, where applicable, the appropriate permit.

Collection
officer's
permit

“7.1 No retail vendor or collection officer may purchase or take delivery of tobacco in Québec from any person other than the holder of a collection officer's permit, unless he has made an agreement under section 17.

Suspension

“7.2 The Minister may suspend, revoke, or refuse to issue a registration certificate or permit, or may refuse to renew the permit of any person who

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

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

(c) does not fulfil or ceases to fulfil the requirements of this Act and the regulations thereunder for obtaining or renewing a registration certificate or permit;

(d) fails to pay an amount to the Minister that he is required to pay to him under section 1015 of the Taxation Act (R.S.Q., chapter I-3) or section 23 or 24 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);

(e) fails to comply with the requirements of this Act or the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);

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

(g) has ceased his activities or has ceased the activity for which the permit was issued;

(h) has been the holder of a permit or a registration certificate which has been revoked within the 24 months preceding the application;

(i) 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 the permit or registration certificate of which has been revoked within 24 months preceding the application.

Revocation However, in the case of subparagraphs *b*, *e* and *f*, the Minister cannot revoke the registration certificate or the permit without having first suspended it.

Notice “**7.3** A notice of non-renewal of the permit must be transmitted to its holder by registered or certified mail or personal service within sixty days preceding the date of expiry of the permit.

Effect of suspension “**7.4** The suspension of a registration certificate or of a permit has effect 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 to the last known address of the holder.

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

Effect “**7.5** The revocation of a registration certificate or permit has effect from the date of service of the decision upon the holder.

Effect Notwithstanding the first paragraph, in the cases described in subparagraphs *b*, *e* and *f* of section 7.2, revocation has effect only upon the expiry of fifteen 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 to the last known address of the holder.

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

Return of certificate The holder must return his certificate or permit to the Minister immediately after being served.

Agent “**7.6** A person having no residence or place of business in Québec must designate an agent residing in Québec and provide the name and address of the agent to the Minister.

Presumption Service upon the agent of any proceeding, application or notice is deemed made upon the person who designated him.

Security **“7.7** The Minister may require, as a condition of issue or continuance in force of a registration certificate or permit, that a person having no residence or place of business in Québec give security in such amount as he fixes.

Security **“7.8** The Minister may require from any person, as a condition of issue or continuance in force of a registration certificate or permit, security in the amount he may fix taking into account, where applicable, the amounts which that person is likely to collect, remit or pay under this Act in the six months following the date on which the security is required, or the amounts he was required to remit or pay under this Act in respect of the six months preceding that date, if such person,

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

(b) is controlled by a person who has been convicted of an offence against a fiscal law within the preceding five years or 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 enterprise;

(d) fails to pay an amount to the Minister that he is required to pay to him under section 1015 of the Taxation Act (R.S.Q., chapter I-3) or section 23 or 24 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

Additional security The Minister may, at any time, require additional security if, at that time, the amount of security furnished is less than the amount that could be fixed at that time according to the terms and conditions provided in the first paragraph.

Manifest or way-bill **“7.9** Every person who, in Québec, transports packages of tobacco intended for sale shall, in respect of each load, draw up or cause to be drawn up a manifest or way-bill in accordance with the requirements prescribed by regulation, for the packages of tobacco transported. He shall keep the manifest or way-bill or cause it to be kept in the vehicle used to transport the tobacco.

Register **“7.10** The storer or carrier must keep a register, in the manner prescribed by regulation, setting out the handling of the stored packages of tobacco and the deliveries made of packages of tobacco, as the case may be.

Report He may be required, at the request of the Minister and on the form prescribed by him, to report the number of packages of tobacco stored, transported or delivered for the period determined by the Minister.

Register **“7.11** Every vending machine operator must keep, for each machine, a register containing the information prescribed by regulation.

Report **“7.12** The Minister may require a vendor to submit a report, on the form prescribed by the Minister and within the time fixed by him, of the inventory of all or certain tobacco products he has in his possession on a date the Minister determines.”

c. 1-2,
s. 8, am. **3.** Section 8 of the said Act, amended by section 9 of chapter 7 of the statutes of 1990 and by section 31 of chapter 60 of the statutes of 1990, is again amended by striking out, in the second and third lines of the first paragraph, the words “for consumption by himself or by any other person at his expense.”

c. 1-2,
s. 11, am. **4.** Section 11 of the said Act is amended by replacing the second, third and fourth paragraphs by the following paragraph:

Tax “The tax shall, for each type of product, be indicated separately from the sale price on any document recording the sale, on any invoice and in the accounting books of the retail vendor, except in the cases prescribed by regulation.”

c. 1-2,
s. 11.1,
added **5.** The said Act is amended by inserting, after section 11, the following section:

Account **“11.1** Every retail vendor shall, not later than the fifteenth day in each month, render an account to the Minister, on the form prescribed by him, of the tax he has collected or should have collected during the preceding month and shall at the same time remit the amount of that tax to him.

Account He shall render an account even if no sale subject to the tax was made during the month.

Exception Notwithstanding the foregoing, a retail vendor is not required to render an account to the Minister unless the Minister demands it or to remit to him the tax collected in respect of the sale of tobacco which he acquired from a person holding a collection officer’s permit where the retail vendor has paid to that person the amount provided for in section 17.2 in respect of that tobacco.

Remittance
of difference

However, if the tax collected in respect of the tobacco referred to in the third paragraph is greater than the amount the retail vendor paid under section 17.2 to a person holding a collection officer's permit, the difference shall be remitted to the Minister in accordance with the terms and conditions provided in the first paragraph."

c. I-2,
s. 12,
repealed

6. Section 12 of the said Act is repealed.

c. I-2,
s. 13.1, am.

7. Section 13.1 of the said Act is amended by replacing the word "All" in the first line by the words "Every package of" and by replacing the words "sale for consumption" in the same line by the words "retail sale".

c. I-2,
s. 13.2,
replaced

8. Section 13.2 of the said Act is replaced by the following section:

Require-
ments

"13.2 No person may sell, deliver or cause to be delivered outside Québec tobacco in a package identified in accordance with section 13.1, unless one of the following conditions applies:

(a) the Minister has authorized him to do so;

(b) the person to whom the tobacco is sold or delivered is party to an agreement made under section 17;

(c) the delivery of such tobacco is made outside Québec for consumption outside Québec and is authorized by regulation.

Penalty

Every person who, contrary to the first paragraph, sells, delivers or causes to be delivered, outside Québec, tobacco in a package identified in accordance with section 13.1 shall pay to the Minister a penalty equal to the amount of tax that would have been payable under section 8 if the tobacco had been sold by retail sale in Québec."

c. I-2,
s. 13.2.1,
added

9. The said Act is amended by inserting, after the heading of Division III.1, the following section:

Examination
and control

"13.2.1 A person carrying out an examination or control under section 38 of the Act respecting the Ministère du Revenu in respect of a vending machine operator may require the operator or a person authorized by the latter to open each vending machine he operates to allow him to examine and control the identification of the packages of tobacco it contains. He may also affix seals to a vending machine found to contain packages of tobacco not identified in accordance with section 13.1.

Seals

The seals shall remain affixed until a judge of the Court of Québec 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. 1-2,
s. 13.3,
replaced

10. Section 13.3 of the said Act, amended by section 451 of chapter 4 of the statutes of 1990, is replaced by the following section:

Inspection
of vehicle

“13.3 Any officer 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.

Immobiliza-
tion of
vehicle

The person may also order that the vehicle not be moved where the owner, driver or person in charge of it refuses to submit to any examination or inspection provided for in the first paragraph or does not hold the documents referred to in that paragraph or produces a manifest or way-bill containing inaccurate or incomplete information or where the person has reasonable grounds to believe that an offence is being or has been committed under paragraph *a* of section 14.1 where it refers to sections 6.2 and 17.10 or under paragraph *a* of section 14.2 where it refers to section 6. In any such case, the owner, driver or person in charge of the vehicle shall identify himself and produce the vehicle registration certificate for examination.

Authoriza-
tion

The vehicle shall not be moved without the authorization of the Minister until a judge rules on the application referred to in section 13.4, submitted by the Minister with reasonable dispatch, and until its seizure, where such is the case.

Warrant

However, if a vehicle is left for the night elsewhere than in a public place and all activity related to its use has ceased, no examination or inspection provided for in the first paragraph may be carried out without a warrant between 10 p.m. and 7 a.m. by a person referred to in the first paragraph.”

c. 1-2,
s. 13.3.1,
added

11. The said Act is amended by inserting, after section 13.3, the following section:

Stopping
of vehicle

“13.3.1 Any officer 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.

Authoriza-
tion

The vehicle shall not be moved without the authorization of the Minister until a judge rules on the application referred to in section 13.4, submitted by the Minister with reasonable dispatch, and until seizure, where such is the case.”

c. 1-2,
s. 13.4,
replaced

12. Section 13.4 of the said Act is replaced by the following sections:

Search and
seizure

“**13.4** With the written authorization of a judge of the Court of Québec, which may be granted on an *ex parte* application following an information under oath from a person who has reasonable grounds to believe that an offence against this Act is being or has been committed in a place in Québec, the Minister may authorize in writing any public servant of the Ministère du Revenu or any other person he designates and any peace officer called upon by that public servant or person for assistance, to search in that place and to seize and remove therefrom any thing which may be used as evidence of the offence and, for those purposes, to enter any building, receptacle or premises in that place.

Authoriza-
tion

“**13.4.1** For the purposes 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 the things to be seized are in the place indicated in the information.

Evidence

“**13.4.2** The public servant or the designated person who carries out a search in accordance with 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.

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 court.

Evidence

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 and that they have been seized in accordance with this 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 15.1, it is confiscated or returned to its owner.”

c. 1-2,
s. 13.5,
replaced **13.** Section 13.5 of the said Act is replaced by the following sections:

Order to
sell tobacco **“13.5** Notwithstanding sections 13.4 and 13.4.2, where packages of tobacco are seized, the Minister may apply to a judge of the Court of Québec for an order to sell the packages on such terms and conditions as the judge may determine. Prior notice of not less than one clear day of the application must be served on the person from whom the thing was seized and on the persons who claim to have a right in the packages. However, the judge may exempt the Minister from such service. The proceeds of the sale, after deduction of the costs, shall be kept by the person designated by the Minister until they are confiscated for the benefit of the Minister or are remitted to their owner.

Retention **“13.6** The thing seized or the proceeds of the sale shall not be retained more than one hundred eighty days from the date of seizure, unless proceedings have been instituted or an order of extension has been issued.

Extension **“13.7** The Minister may apply to a judge, before the expiry of the prescribed retention period, for an extension of not more than one hundred eighty days.

Notice Prior notice of the application for an extension shall be served on the person from whom the thing was seized or on the persons who claim to have a right in the thing seized or in the proceeds of the sale thereof.

Return of
thing seized **“13.8** The Minister must return the thing seized or the proceeds of the sale to the person from whom the thing was seized as soon as retention thereof is no longer necessary in the interests of justice.”

c. 1-2,
ss. 14 and
14.1, repla-
ced **14.** Sections 14 and 14.1 of the said Act are replaced by the following sections:

Offence and
penalty **“14.** Every person who

(a) does not furnish a report or other document or any information provided for by this Act or the regulations thereunder, in the manner and at the time provided in sections 5.1, 6.6, 9, 9.1, 11.1, 17.3, 17.5 and in the second paragraph of section 7.10, or

(b) being a mandatary of the Minister, refuses or neglects to collect, account for, report or remit the tax provided for in section 8 or the amount provided for in section 17.2,

is guilty of an offence and is liable to a fine of not less than \$200 for each day that the omission continues.

Offence and
penalty

“14.1 Every person who

(a) contravenes section 3, 6.2, 6.5, 7.1, 7.11 or 17.10 or the first paragraph of section 7.10,

(b) neglects or omits to comply with stop signs set up by a person referred to in section 13.3 or 13.3.1 or to obey the signals or orders of such a person,

(c) contrary to section 13.3, refuses to produce the registration certificate of a vehicle other than a pleasure vehicle, the copy of the permit or the manifest or way-bill, or refuses to allow the inspection or examination provided for in the first paragraph of section 13.3,

(d) furnishes a manifest or way-bill containing inaccurate or incomplete information,

(e) being the holder of a registration certificate or a permit, transfers or lends it or causes it to be used by another person, or

(f) removes or alters a seal affixed pursuant to section 13.2.1 or otherwise contravenes that section,

is guilty of an offence and is liable to a fine of not less than \$2 000 nor more than \$25 000.

Offence and
penalty

“14.2 Every person who

(a) contravenes section 6, 7 or 7.9,

(b) sells, delivers or has in his possession tobacco intended for retail sale in Québec and contained in a package which is not identified in accordance with section 13.1,

(c) uses a registration certificate or a permit issued in the name of another person,

(d) obtains or attempts to obtain, by means of false or misleading statements, a registration certificate or a permit issued under this Act, or

(e) uses, in Québec, a case not identified in accordance with section 17.10 for the sale, delivery, transport or storage of cartons of cigarettes,

is guilty of an offence and is liable to a fine of not less than \$2 000 nor more than \$25 000 or, notwithstanding article 231 of the Code of Penal Procedure (1987, chapter 96), to both the fine and imprisonment for not more than two years.”

c. I-2,
s. 15.1,
replaced

15. Section 15.1 of the said Act is replaced by the following sections:

Confiscation

“**15.1** Where a person is convicted of an offence against this Act, the Minister may, on a motion to a judge of the Court of Québec within thirty days from the day on which the person was convicted, request the confiscation for his benefit of any thing seized pursuant to section 13.4 or 13.4.2 or of the proceeds referred to in section 13.5.

Confiscation

The judge must order the confiscation if the person does not establish that he is able to pay the amount of the fine or any assessment or re-assessment issued under this Act and any costs related to the seizure and the preservation of the thing referred to in the motion.

Release

Any person, other than the offender, who wishes to revendicate a thing seized and retained under section 13.4 or section 13.4.2 or the proceeds referred to in section 13.5 may obtain the release thereof on presenting a motion to the Court of Québec stating his name and residence and setting out under oath the nature of his right in the seized thing or in the proceeds; the court may thereupon order, on such conditions as it determines, the release of the thing seized or the proceeds, as the case may be.

Fine and
costs

“**15.2** Where the judge orders confiscation under section 15.1, and the defendant has not, within the time granted, paid the fine and costs to which he was sentenced, the Minister shall remit the proceeds of the sale to the collector of fines designated under article 322 of the Code of Penal Procedure (1987, chapter 96), after deducting the costs of seizure and preservation incurred by the Minister up to the amount of the fine and the costs imposed on the defendant.”

c. I-2,
Div. VI,
heading,
replaced

16. The heading of Division VI of the said Act is replaced by the following heading:

“SPECIAL PROVISIONS”.

c. I-2,
s. 17.1,
repealed

17. Section 17.1 of the said Act is repealed.

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

18. Section 17.2 of the said Act is amended

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

Collection

“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, unless the delivery of the tobacco is made outside Québec for consumption outside Québec and is authorized by regulation.”;

(2) by replacing, in the third and fourth lines of the second paragraph, the words “to the agreement he has made with the Minister” by the words “to an agreement made”;

(3) by adding, after the third paragraph, the following paragraph:

Amount
collected

“The amount referred to in the first paragraph shall, for each type of product, be indicated separately from the sale price on any document recording the sale, on any invoice and in the accounting books of the collection officer.”

c. I-2,
s. 17.3, am.

19. Section 17.3 of the said Act is amended

(1) by replacing, in the first line of the first paragraph, the words “Every collection officer holding a registration certificate” by the words “The holder of a collection officer’s permit”;

(2) by striking out, in the first and second lines of the third paragraph, the words “with the Minister”;

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

Exception

“Notwithstanding the foregoing, the holder of a collection officer’s permit is not required to remit the amount collected in respect of tobacco sold which he acquired from a person holding a collection officer’s permit where he paid to that person the amount provided for in section 17.2 in respect of that tobacco.”;

(4) by replacing, in the third and fourth lines of the fifth paragraph, the words “the other collection officer holding a registration certificate, the Minister may require that the difference be remitted to him.” by the words “a person holding a collection officer’s permit, the difference shall be remitted to the Minister according to the terms and conditions set out in the first paragraph.”

c. I-2,
s. 17.4, am.

20. Section 17.4 of the said Act is amended

(1) by replacing the first, second and third paragraphs by the following paragraphs:

Failure to
collect

“17.4 Every holder of a collection officer’s permit who fails to collect the amount provided for in section 17.2 or fails to remit to the Minister such an amount he has collected and is required to remit or who pays it to a person who does not hold a collection officer’s permit shall become a debtor of Her Majesty in right of Québec for that amount.

Failure to
hold permit

Every collection officer who is not the holder of a collection officer’s permit at the time he sells, delivers or causes to be delivered tobacco in Québec shall become a debtor of Her Majesty in right of Québec for any amount provided for in section 17.2 which he collected or should have collected if he had held a collection officer’s permit.

Unidentified
tobacco

Every collection officer who sells, delivers or causes to be delivered in Québec tobacco in a package that is not identified in accordance with section 13.1 and that is intended for retail sale in Québec shall become a debtor of Her Majesty in right of Québec for an amount equal to the tax computed under section 8 in respect of that tobacco.”;

(2) by replacing, in the first line of the fourth paragraph, the words “in this section are deemed” by the words “in the first and second paragraphs are then deemed”.

c. I-2,
ss. 17.5-
17.11, added

21. The said Act is amended by inserting, after section 17.4, the following sections:

Report

“17.5 Every collection officer shall, not later than the fifteenth day in each month, report to the Minister, on the form prescribed by him, the total quantity of packages of tobacco purchased, sold and handled during the preceding month, by type of product and according to the identification of each package.

Report

The report shall be made and sent to the Minister even if no package was bought, sold or handled during the month.

Statement

He shall also, at the time prescribed in the first paragraph, furnish the Minister with a statement in respect of each customer, in accordance with the requirements prescribed by regulation, showing the sales and deliveries of packages of tobacco made during the preceding month by type of product and according to the identification of each package and indicating, by type of product, the amount equal to the tax collected or to be collected.

- Allowance “**17.6** The Minister may make an allowance determined by regulation to any holder of a collection officer’s permit with whom he has made an agreement under section 17 for the collection and remittance of the amount equal to the tax provided for in this Act.
- Presumption “**17.7** Where a person is transporting packages of tobacco in Québec without having in his possession the manifest or way-bill provided for in section 7.9, it is presumed, in the absence of proof to the contrary, that the tobacco is intended for retail sale in Québec.
- Unidentified tobacco “**17.8** Where a person stores, in Québec, tobacco in a package not identified in accordance with section 13.1 without holding a permit to do so, it is presumed, in the absence of proof to the contrary, that the tobacco is intended for retail sale in Québec.
- Offence report “**17.9** Where an offence under this Act has been committed, any person entrusted with the enforcement of this Act may draw up an offence report.
- Proof In any proceedings instituted under this Act, the offence report, signed by the person mentioned in the first paragraph, shall be accepted as *prima facie* proof of the facts attested by and of the authority of the person who signs such report, without other proof of his appointment or of his signature.
- Identification “**17.10** Every case used in Québec for the sale, delivery, transport or storage of cartons of cigarettes 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.
- Identification “**17.11** Where a new identification is prescribed under section 13.1 or 17.10, the Government may, by regulation, prescribe the terms and conditions according to which it is carried out and the categories of persons to whom it applies.”
- Statement **22.** Every person who, on (*insert here the date of coming into force of this Act*), holds a registration certificate issued under section 3 of the Tobacco Tax Act as it read before being amended by this Act shall, before (*insert here the date of the sixty-first day following the date of coming into force of this Act*), transmit to the Minister the statement provided for in paragraph *b* of section 4, as enacted by section 2 of this Act.
- Application for permit **23.** Every person who, on (*insert here the date of coming into force of this Act*), holds a registration certificate issued under section

3 of the Tobacco Tax Act as it read before being amended by this Act shall, before (*insert here the date of the sixty-first day following the date of coming into force of this Act*), transmit to the Minister an application for a permit under the provisions of section 6.1 as enacted by section 2 of this Act. That person is deemed to hold the permit applied for until the date on which the Minister issues the permit or transmits his decision as regards his refusal to issue it.

Offence
against a
fiscal law

24. Any offence against the Meals and Hotels Tax Act (R.S.Q., chapter T-3) committed before 1 January 1991 is an offence against a fiscal law within the meaning of section 2 of the Tobacco Tax Act as amended by section 1 of this Act.

Coming into
force

25. This Act will come into force on the date or dates fixed by the Government.