

1985, chapter 39
AN ACT TO AMEND THE MINING DUTIES ACT

Bill 3

Introduced by Mr Raymond Savoie, Minister for Mines

Introduced 18 December 1985

Passage in principle 19 December 1985

Passage 19 December 1985

Assented to 19 December 1985

Coming into force: 19 December 1985

Act amended:

Mining Duties Act (R.S.Q., chapter D-15)



CHAPTER 39

An Act to amend the Mining Duties Act

[Assented to 19 December 1985]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. D-15,
s. 1, *am.*

1. The second paragraph of section 1 of the Mining Duties Act (R.S.Q., chapter D-15) is amended

(1) by striking out the alphabetical nomenclature preceding the definitions of the words or expressions “mining operation” or “mining”, “mine” and “regulation”;

(2) by inserting, before the definition of the expression “mining operation” or “mining”, the following definition:

“assessment”

““assessment” means an assessment, a reassessment and an additional assessment;”;

(3) by replacing the definition of the expression “mining operation” or “mining” by the following definition:

“mining operation”
or “mining”

““mining operation” or “mining” means all the work whereby mineral substances are explored for in view of being extracted or extracted for the purpose of obtaining a commercial product;”.

Declaratory
section

This section is declaratory except for cases that are pending on 18 December 1985.

c. D-15,
s. 8.1,
added

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

Annual loss

“**8.1** The annual loss of an operator for a fiscal year is the amount of such loss computed in accordance with the provisions of this chapter

which relate to the computation of the annual profit, adapted as required.”

c. D-15,
s. 18.1.
added

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

Expenses
not included

“**18.1** The mining exploration and development expenses referred to in paragraph *c* or *d* of section 18 do not include any outlay or expense incurred to the extent that the outlay or expense constitutes an expenditure incurred by a person under an agreement entered into with an operator or another corporation or partnership, whereby the person incurs such expenditure solely as consideration for a share of the capital stock of the operator or of another corporation or partnership, for an interest in a partnership, or for an interest or right attaching to the share or interest.”

Declaratory
section

This section is declaratory except for cases that are pending on 18 December 1985.

c. D-15,
s. 27, am.

4. Section 27 of the said Act is amended by replacing paragraph *c* by the following paragraph:

“(c) any outlay or expense incurred as cost of work done during the fiscal year with respect to shafts, excavations, drifts, trenches, borings or other means of mining exploration or development referred to in paragraph *m* of section 8 or as mining exploration and development expenses referred to in paragraph *n* of that section to the extent that the outlay or expense constitutes an expenditure incurred by a person under an agreement entered into with the operator or another corporation or partnership, whereby the person incurs such expenditure solely as consideration for a share of the capital stock of the operator or of another corporation or partnership, for an interest in a partnership, or for an interest or right attaching to the share or interest;”.

Declaratory
section

This section is declaratory except for cases that are pending on 18 December 1985.

c. D-15,
s. 27.1.
added

5. The said Act is amended by inserting, after section 27, the following section:

Reductions

“**27.1** For the purposes of sections 9 to 26, the cost of a property is reduced by

(a) the amount of any outlay or expense incurred in respect of the property to the extent that the outlay or expense constitutes an expenditure incurred by a person under an agreement entered into with

an operator or another corporation or partnership, whereby the person incurs such expenditure solely as consideration for a share of the capital stock of the operator or of another corporation or partnership, for an interest in a partnership, or for an interest or right attaching to the share or interest;

(b) the amount of a subsidy or any other assistance received from a government, a municipality or another public body in respect of the property whether as a grant, a premium, a conditional repayment loan or a tax deduction in any other form, including a payment under the Emergency Gold Mining Assistance Act (1970, R.S.C, chapter E-5).”

Declaratory
section

This section is declaratory except for cases that are pending on 18 December 1985.

c. D-15,
ss. 30-32,
33-35,
replaced

6. Sections 30 to 32 and Chapter V of the said Act, which includes sections 33 to 35, are replaced by the following:

Duties
payable

“**30.** The duties payable by an operator shall be 18 % of his annual profit for each fiscal year.

“CHAPTER V

“CREDIT ON DUTIES

“DIVISION I

“CREDIT ON DUTIES AND DEFERRABLE CREDIT ON DUTIES

Allowable
deduction

“**31.** An operator may deduct from the duties payable by him for each fiscal year, as credit on duties, an amount equal to the lesser of

(a) the duties payable for the fiscal year under section 30,

and

(b) \$90 000.

Allowable
deduction

“**31.1** An operator may deduct from the duties payable for the three subsequent fiscal years, as deferrable credit on duties, an amount equal to the difference between \$90 000 and the amount deducted under section 31, up to the amount of that difference.

Less than
12 months

“**31.2** Where a fiscal year is less than twelve months, the amount of \$90 000 contemplated in sections 31 and 31.1 is reduced proportionately to the ratio between the number of full months included in the fiscal year and twelve months.

"DIVISION II

"CREDIT ON DUTIES REFUNDABLE FOR LOSSES

Annual loss **"32.** An operator who sustains an annual loss in a fiscal year may claim, as a refundable credit on duties, an amount equal to the lesser of 18 % of

(a) the annual loss,

and

(b) the allowable amount.

Allowable amount **"32.1** The allowable amount is the sum of the amounts deductible as mining exploration and development expenses incurred after 23 April 1985 by an operator for work carried out in Québec and of the amount deductible as depreciation allowance in respect of the cost of property acquired after 23 April 1985 by an operator and effectively used by him in mining operations in Québec after that date.

Restriction The allowable amount does not, however, include the expenses incurred for the operation of a quarry, a sand or gravel pit or a water well or expenses incurred by an operator for mining exploration and development work carried out for any purpose other than that of extracting mineral substances.

"quarry" For the purposes of this section, a quarry means any place from where building or ornamental materials are extracted by a simple dynamiting, grinding, crushing or sawing operation.

"DIVISION III

"CREDIT ON DUTIES FOR LOSSES

Deduction over several years **"33.** An operator who sustains an annual loss in a fiscal year may deduct from the duties payable for the three preceding fiscal years and the seven subsequent fiscal years, as credit on duties for losses, an amount equal to the amount by which 18 % of the annual loss exceeds the credit on duties refundable for losses provided for in section 32, until that amount is used in full.

"DIVISION IV

"ORDER OF APPLICATION

Order of deductions **"34.** Every person who is required to file a return under section 36 or 37 shall apply the credit on duties provided for in section 31 before the deferrable credit on duties provided for in section 31.1 and the credit on duties for losses provided for in section 33.

Order of deductions That person shall also indicate in his return the order of application of the deferrable credit on duties and credit on duties for losses.

Restriction **"34.1** Notwithstanding section 31.1, no operator may deduct any amount as deferrable credit on duties for a fiscal year until he has used in full all the amounts deductible as deferrable credit on duties for previous fiscal years.

Restriction **"34.2** Notwithstanding section 33, no operator may deduct any amount as credit on duties for losses in respect of a loss sustained in a fiscal year until he has used in full all the deductions as credit on duties for losses in respect of losses sustained in previous fiscal years.

"DIVISION V

"JOINT OPERATION AND RELATED PERSONS

Joint operation and related persons **"35.** Several operators of a jointly operated mine or several operators who are related persons at any time during a fiscal year may claim only one deduction for credit on duties, only one deduction for deferrable credit on duties and only one deduction for credit on duties for losses, and may claim the payment of only one credit on duties refundable for losses, apportioned among themselves according to the proportion established by the operators pursuant to an agreement, a copy of which must be sent to the Minister within six months after the end of their fiscal years.

Apportionment If there is no agreement, the Minister shall apportion the credit on duties, the deferrable credit on duties, the credit on duties for losses and the credit on duties refundable for losses among the operators according to the proportion he determines.

Single deduction **"35.1** An operator of several mines operated solely by him or jointly with others or both by him and jointly with others may claim as a deduction for all such mines only one credit on duties, only one deferrable credit on duties and only one credit on duties for losses, and

may claim for all the mines the payment of only one credit on duties refundable for losses.”

c. D-15,
s. 36, am.

7. Section 36 of the said Act is amended by replacing the first paragraph by the following paragraph:

Return filed
with the
Minister

“**36.** Every operator of a mine shall, within six months after the expiry of his fiscal year, file with the Minister in the form prescribed by him a return of his annual profit or annual loss with a certified copy of the financial statements of the undertaking and the relevant schedules.”

c. D-15,
s. 39,
replaced
Duties
payable

8. Section 39 of the said Act is replaced by the following section:

“**39.** The Minister shall examine with dispatch each return filed with him and determine the duties payable and the interest and penalties, if any, which are exigible.

Profit, loss
or credit

When making a determination under the first paragraph or when determining the duties, interest and penalties under section 42, 43, 43.2 or 44, the Minister shall also determine, as the case may be, the annual profit, the annual loss, the credit on duties, the deferrable credit on duties, the allowable amount provided for in section 32.1, the credit on duties refundable for losses and the credit on duties for losses.

Assessment

Any determination made by the Minister under this section constitutes an assessment.”

c. D-15,
s. 43,
replaced

New
assessment

9. Section 43 of the said Act is replaced by the following section:

“**43.** The Minister may re-determine the duties, interest and penalties and make a reassessment or an additional assessment, as the case may be,

(a) at any time, if the operator or the person who filed the return

i. has made a misrepresentation that is attributable to neglect or wilful default or has committed any fraud in filing the return or in supplying any information provided for in this Act; or

ii. has filed with the Minister a waiver in prescribed form within 4 years from the day of mailing of the notice of an original assessment or of the notification that no duty is payable for a fiscal year;

(b) within 7 years from the day of mailing of the notice of an original assessment or of the notification that no duty is payable for a fiscal year provided the operator

i. has amended the return for the fiscal year in accordance with section 43.2, or

ii. would have amended the return for that fiscal year pursuant to section 43.2 had the time limit prescribed in that section not expired;

(c) within 4 years of the day referred to in paragraph *b* in all other cases.”

c. D-15,
ss. 43.1,
43.2, added

10. The said Act is amended by inserting, after section 43, the following sections:

Objection
and appeal

“**43.1** Where the Minister has re-determined the duties, interest and penalties under paragraph *b* of section 43, the operator may object to the assessment and appeal to the Provincial Court in accordance with this Act only on grounds pertaining to the deductions provided for in sections 31.1 and 33.

Return
amended

“**43.2** An operator who sustains an annual loss in a fiscal year may amend the return he has filed for a previous fiscal year only for the purposes of claiming or changing a deduction provided for in section 33 and changing a deduction provided for in section 31.1, by sending a claim to the Minister, in prescribed form and tenor, within three years from the day on which or prior to which he was required to file the return or, if he filed it before the time limit prescribed by law, from that day.

Duties
payable

The Minister shall then re-determine the duties payable and the interest and penalties exigible, as the case may be, for the previous fiscal year and for any relevant fiscal year not prior to that year.”

c. D-15,
s. 52.1,
added

11. The said Act is amended by inserting, after section 52, the following section:

Duties
payable for
previous
fiscal year

“**52.1** Where an operator sustains an annual loss in a fiscal year, the duties payable for a previous fiscal year in respect of which a claim was directly or indirectly filed under section 43.2 are deemed, for the purposes of computing the interest payable under sections 50 and 51, to be equal to the duties the operator would have had to pay if no claim had been directly or indirectly filed under section 43.2 in respect of a previous fiscal year.

Period con-
templated

The duties referred to in the first paragraph are, however, deemed to be payable only in respect of the period ending on the latest of the following dates:

(a) the day on which the claim was directly or indirectly filed for the previous fiscal year;

(b) the day on or before which a return was required to be filed for the fiscal year in which the operator sustained the annual loss;

(c) the day on which the return was filed.”

c. D-15,
s. 53,
replaced
Penalty

12. Section 53 of the said Act is replaced by the following section:

“**53.** Every person who fails to make a return in the form prescribed and within the prescribed time limits, in accordance with sections 36 to 38, is liable to a penalty of \$10 a day for every day the omission continues, up to an amount of \$2 000.”

c. D-15,
s. 54,
replaced
Penalty

13. Section 54 of the said Act is replaced by the following section:

“**54.** Every person who fails to furnish on a prescribed form the information required under sections 36 to 38 is liable to a penalty of \$10 a day for every day the omission continues, up to an amount of \$2 000.”

c. D-15,
s. 58,
replaced
Refund of
overpay-
ment

14. Section 58 of the said Act is replaced by the following section:

“**58.** Where an operator has filed a return for a fiscal year and has paid for that year as duties, interest or penalty an amount greater than that which was exigible, the Minister may refund the excess to the operator at the same time as he sends him the notice of assessment for that fiscal year.

Refund of
overpay-
ment

The Minister shall make the refund provided for in the first paragraph if the operator applies for it within 4 years after the end of the fiscal year concerned or where paragraph *b* of section 43 applies, within 7 years after the end of the fiscal year concerned; in other cases, the Minister may make the refund.”

c. D-15,
ss. 59.1,
59.2, added

15. The said Act is amended by inserting, after section 59, the following sections:

Exigibility
of excess
refund

“**59.1** Where the Minister, by mistake or on the basis of incorrect or incomplete information, has refunded to an operator or has applied to the operator’s liability an amount greater than the amount that should have been refunded or applied, the excess shall be exigible from the date on which it was paid or applied by the Minister and the Minister may, at any time, assess the operator for that amount.

Date of
exigibility

However, if the Minister considers that he has not refunded or applied the excess on the basis of incorrect or incomplete information supplied by the operator, the excess shall be exigible from the date of the mailing of the notice of assessment.

Consolida-
ted revenue
fund

“**59.2** Any amount that the Minister, by mistake or on the basis of incorrect or incomplete information, has refunded to an operator as a refundable credit on duties and that the Minister collects subsequently shall form part of the consolidated revenue fund.”

c. D-15,
ss. 60.1,
60.2, added

16. The said Act is amended by inserting, after section 60, the following sections:

Presumed
date of
payment

“**60.1** Where an operator sustains an annual loss in a fiscal year, that part of an overpayment made by the operator for a previous fiscal year resulting directly or indirectly from the filing of a claim pursuant to section 43.2 is deemed, for the purposes of section 60, to have been paid on the latest of the following dates:

(a) the day following the day on which the claim was directly or indirectly filed for the previous fiscal year;

(b) the day following the day on or before which a return was required to be filed for the fiscal year in which the operator sustained the annual loss;

(c) the day following the day on which the return was filed.

Consolida-
ted revenue
fund

“**60.2** Every amount refunded by the Minister and interest, if any, shall be paid out of the consolidated revenue fund.”

c. D-15,
s. 65,
replaced
Validity of
reassess-
ment

17. Section 65 of the said Act is replaced by the following section:

“**65.** A reassessment made by the Minister pursuant to section 63 is not invalid by reason only of not having been made in the seven-year period prescribed in paragraph *b* of section 43, where that paragraph applies, or in the four-year period prescribed in paragraph *c* of section 43, in other cases.”

Computa-
tion of
profit

18. Where the fiscal year of an operator begins before 24 April 1985 and ends after 23 April 1985, the annual profit for that fiscal year is equal to the aggregate of

(a) the proportion of the annual profit for that fiscal year before any deduction for mining exploration and development expenses incurred during the fiscal year and before any deduction as depreciation

allowance with respect to the cost of property acquired during the fiscal year, that the number of days before 24 April 1985 in the fiscal year is of the total number of days in the fiscal year, less the deductions for mining exploration and development expenses incurred during the fiscal year before 24 April 1985 and the deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year before 24 April 1985; and

(b) the proportion of the annual profit for that fiscal year before any deduction for mining exploration and development expenses incurred during the fiscal year and before any deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year, that the number of days after 23 April 1985 in the fiscal year is of the total number of days in the fiscal year, less the deductions for mining exploration and development expenses incurred during the fiscal year after 23 April 1985 and the deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year after 23 April 1985.

Computation of loss

19. Where the fiscal year of an operator begins before 24 April 1985 and ends after 23 April 1985, the annual loss for that fiscal year is equal to the aggregate of

(a) the proportion of the annual loss for that fiscal year before any deduction for mining exploration and development expenses incurred during the fiscal year and before any deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year, that the number of days before 24 April 1985 in the fiscal year is of the total number of days in the fiscal year, plus the deductions for mining exploration and development expenses incurred during the fiscal year before 24 April 1985 and the deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year before 24 April 1985; and

(b) the proportion of the annual loss for that fiscal year before any deduction for mining exploration and development expenses incurred during the fiscal year and before any deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year, that the number of days after 23 April 1985 in the fiscal year is of the total number of days in the fiscal year, plus the deductions for mining exploration and development expenses incurred during the fiscal year after 23 April 1985 and the deduction as depreciation allowance with respect to the cost of property acquired during the fiscal year after 23 April 1985.

Restriction **20.** No operator may, for the purposes of sections 18 and 19, balance his accounts at 23 April 1985.

Computation of duties payable **21.** Notwithstanding section 30 of the Mining Duties Act (R.S.Q., chapter D-15), as replaced by section 6 of this Act, where the fiscal year of an operator begins before 24 April 1985 and ends after 23 April 1985, the duties payable for that fiscal year shall be equal to the aggregate of

(a) the duties that would be payable on the amount computed under paragraph *a* of section 18, where that paragraph applies, or under paragraph *a* of section 19, in other cases, if section 31 of the Mining Duties Act, as it read on 23 April 1985, had applied to the whole fiscal year, reducing the amounts of \$3 000 000, \$10 000 000 and \$20 000 000 referred to in the said section 31 proportionately to the ratio between the number of days before 24 April 1985 in the fiscal year and the total number of days in the fiscal year and if, for the purposes of the said section 31, the amount computed under paragraph *a* of section 18, where that paragraph applies, or under paragraph *a* of section 19, in other cases, represented the annual profit for the fiscal year; and

(b) the duties that would be payable on the amount computed under paragraph *b* of section 18, where that paragraph applies, or under paragraph *b* of section 19, in other cases, if section 30 of the Mining Duties Act, as replaced by section 6 of this Act, had applied to the whole fiscal year and if, for the purposes of the said section 30, that amount represented the annual profit for the fiscal year.

Amount presumed nil **22.** For the purposes of section 21, an amount computed under paragraph *a* or *b* of section 18, where that section applies, or under paragraph *a* or *b* of section 19, in other cases, that is less than zero is deemed to be equal to zero.

Reduction **23.** In computing the amount of the duties payable under paragraph *a* of section 21, where an amount computed under paragraph *a* of section 18, where that paragraph applies, or under paragraph *a* of section 19, in other cases, is greater than zero, an operator may deduct from that amount, and up to that amount, an amount of \$250 000 reduced proportionately to the ratio between the number of days before 24 April 1985 in the fiscal year and the total number of days in the fiscal year.

Averaging of deduction **24.** The averaging of the deduction of duties not exceeding 15 per cent of a loss incurred in an operator's fiscal year ending before 24 April 1985 provided for in section 34 of the Mining Duties Act as

it read on 23 April 1985 remains valid for the number of fiscal years over which the operator was entitled to average the deduction.

Allowable
deduction

25. Where an amount computed under paragraph *a* of section 18, where that paragraph applies, or under paragraph *a* of section 19, in other cases, is less than zero, an operator may deduct from the amount of duties payable computed under paragraph *b* of section 21 for a fiscal year and of duties payable for the three subsequent fiscal years an amount not exceeding 15 per cent of the amount computed under paragraph *a* of section 18, where that paragraph applies, or under paragraph *a* of section 19, in other cases, until the amount equal to 15 per cent is used in full.

Restriction

26. Notwithstanding sections 31 to 33, 35 and 35.1 of the Mining Duties Act, as replaced or enacted by section 6 of this Act, in no case may an operator deduct from the amount of duties payable computed under paragraph *b* of section 21 or of duties payable for the fiscal years ending after 23 April 1985 any amount as a credit on duties, deferrable credit on duties or credit on duties refundable for losses until he has used in full all the deductions provided for in sections 24 and 25.

Less than
365 days

27. Where the fiscal year of an operator begins before 24 April 1985 and ends after 23 April 1985, the credit on duties provided for in section 31 of the Mining Duties Act, as replaced by section 6 of this Act, shall be reduced proportionately to the ratio between the number of days after 23 April 1985 in the fiscal year and the total number of days in the fiscal year.

Restriction

28. Notwithstanding section 31 of the Mining Duties Act, as replaced by section 6 of this Act, where the fiscal year of an operator begins before 24 April 1985 and ends after 23 April 1985, the operator may deduct from the duties payable for that fiscal year, as credit on duties any amount that does not exceed the amount of duties payable as computed under paragraph *b* of section 21.

Presumed
amount

29. An amount computed under paragraph *a* of section 18, where that paragraph applies, or under paragraph *a* of section 19, in other cases, that is less than zero is deemed to be equal to zero for the purposes of sections 32 and 33 of the Mining Duties Act, as replaced by section 6 of this Act.

Presumed
annual loss

30. Where an amount computed under paragraph *b* of section 18, where that paragraph applies, or under paragraph *b* of section 19, in other cases, is less than zero, the annual loss referred to in sections 32 and 33 of the Mining Duties Act, as replaced by section 6 of this

Act, is deemed to be equal to that amount for the fiscal year beginning before 24 April 1985 and ending after 23 April 1985.

Restriction

31. Notwithstanding section 33 of the Mining Duties Act, as replaced by section 6 of this Act, in no case may an operator deduct from the duties payable for the fiscal years ending before 24 April 1985 or from the amount of duties payable computed under paragraph *a* of section 21 an amount as a credit on duties for losses.

Deemed liability

32. Notwithstanding section 52 of the Mining Duties Act, an operator required to pay an amount under section 46 of the said Act in respect of a fiscal year beginning before 24 April 1985 and ending after 23 April 1985 is deemed, for the purposes of section 51 of the said Act, to have been liable to make payments based on,

(*a*) for each month of the fiscal year ending before 24 April 1985, the lesser of the amount of duties payable computed under paragraph *a* of section 21, increased proportionately to the ratio between the total number of days in the fiscal year and the number of days before 24 April 1985 in the fiscal year, and the duties payable by him for the preceding fiscal year;

(*b*) for each month of the fiscal year ending after 23 April 1985, the lesser of the amount of duties payable computed under paragraph *b* of section 21, increased proportionately to the ratio between the total number of days in the fiscal year and the number of days after 23 April 1985 in the fiscal year, and the duties payable by him for the preceding fiscal year.

Effect

33. Sections 2, 6, 7 and 18 to 32 of this Act have effect from 24 April 1985.

Coming into force

34. This Act comes into force on 19 December 1985.