



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 90

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

Introduction

Introduced by
Mr Raymond Savoie
Minister of Revenue

**Québec Official Publisher
1993**

EXPLANATORY NOTES

This bill proposes various measures relating to the application of fiscal legislation and to tobacco tax fraud, as announced by the Québec Minister of Finance in the information bulletin 93-1 dated 23 April 1993.

The Tobacco Tax Act is amended in order to subject raw leaf tobacco to the tax on tobacco. The bill also provides certain measures intended to reduce tobacco-related fraud, which include

– increasing the maximum fine that may be imposed for certain offences;

– creating a new offence to cover the possession, for purposes of consumption, of illegally-acquired tobacco;

– reinforcing existing powers relating to searches and seizure and to the detention, confiscation or disposal of things seized.

In addition, the bill amends the Act respecting the Ministère du Revenu in order to solve a number of problems relating to the interpretation and application of the Act and other fiscal laws. The proposed amendments introduce

(1) measures relating to the reproduction of documents on photographic film and the rules of proof applicable to such documents;

(2) a provision under which an agreement between the governments of Canada and Québec for the collection of duties under a fiscal law may permit the Government of Canada to enter into another agreement with a third person to facilitate the application of the initial agreement;

(3) measures authorizing the Minister of Revenue to enter into agreements with fiscal debtors concerning the repayment of their debts;

(4) measures specifying certain conditions and circumstances relating to the imposition of charges for the recovery of fiscal debts;

(5) measures enabling fiscal debts to be recovered from third persons who owe money to fiscal debtors;

(6) measures enabling the Minister of Revenue to delegate some of his powers under a fiscal law to persons working for a person or body having entered into an agreement with the Government of Canada concerning the implementation of an agreement between the Government of Canada and that of Québec for the collection of duties under a fiscal law;

(7) measures concerning the security that the Minister of Revenue may require from a person bound to collect, withhold or pay duties under a fiscal law;

(8) a measure countering the effects of bankruptcy on the recovery of a sum deducted, withheld or collected under a fiscal law when that sum has been mingled with the patrimony of the bankrupt;

(9) measures enabling the Minister of Revenue to withhold a reimbursement or require the withholding of an amount payable by a public body to a person who has not filed the returns and reports he was bound to file under a fiscal law or a regulation thereunder;

(10) measures enabling the Minister of Revenue to require a public body to withhold all or part of an amount owed by the Government to a person who also owes an amount under a fiscal law, in order to allocate that amount to the payment of the debt of that person;

(11) new rules governing the service of a statement of offence in respect of an offence under a fiscal law committed by a person who does not reside in Québec;

(12) a measure enabling the Government to remit any amount payable, or refund any amount paid in error, to the Ministère du Revenu;

(13) a measure enabling the Government to determine the length of time for which the Minister of Revenue may require security or additional security.

Lastly, the bill repeals some provisions of the Tobacco Tax Act (R.S.Q., chapter I-2), the Fuel Tax Act (R.S.Q., chapter T-1) and the

Act respecting the Québec sales tax and amending various fiscal legislation (1991, chapter 67) as a result of their inclusion in the Act respecting the Ministère du Revenu.

ACTS AMENDED BY THIS BILL:

- (1) Tobacco Tax Act (R.S.Q., chapter I-2);
- (2) Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- (3) Fuel Tax Act (R.S.Q., chapter T-1);
- (4) Act respecting the Québec sales tax and amending various fiscal legislation (1991, chapter 67).

Bill 90

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TOBACCO TAX ACT

1. (1) Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2), replaced by section 1 of chapter 16 of the statutes of 1991, is amended

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

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

“ “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;”;

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

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

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

“ “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;”.

(2) This section has effect from 23 April 1993.

2. Section 4 of the said Act, replaced by section 2 of chapter 16 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;”.

3. Section 6.1 of the said Act, enacted by section 2 of chapter 16 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;”.

4. Section 6.3 of the said Act, enacted by section 2 of chapter 16 of the statutes of 1991, 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.”

5. Sections 7.2 to 7.5, 7.7 and 7.8 of the said Act, enacted by section 2 of chapter 16 of the statutes of 1991, are repealed.

6. Section 7.9 of the said Act, enacted by section 2 of chapter 16 of the statutes of 1991, 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.”

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

“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.”

8. Section 13.1 of the said Act, amended by section 7 of chapter 16 of the statutes of 1991, is replaced by the following section:

“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.”

9. Section 13.4 of the said Act, replaced by section 12 of chapter 16 of the statutes of 1991, is again replaced by the following section:

“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 and that there is in a place in Québec any thing that may afford evidence of the offence or which is being or has been used for the commission of the offence, 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 the thing and, for those purposes, to enter any building, receptacle or premises in that place.”

10. Section 13.4.1 of the said Act, enacted by section 12 of chapter 16 of the statutes of 1991, is replaced by the following section:

“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 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.”

11. Section 13.4.2 of the said Act, enacted by section 12 of chapter 16 of the statutes of 1991, is amended

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

“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 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 third paragraph by the following paragraph:

“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.”

12. Section 13.4.3 of the said Act, enacted by section 12 of chapter 16 of the statutes of 1991, is replaced by the following section:

“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, 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.

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.”

13. Section 13.5 of the said Act, replaced by section 13 of chapter 16 of the statutes of 1991, is again replaced by the following section:

“13.5 Notwithstanding sections 13.4 and 13.4.2, where any package of tobacco, vehicle or vending machine is seized, the Minister may apply to a judge of the Court of Québec for an order to sell such package, vehicle or vending machine on such 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 such package, vehicle or vending machine. However, the judge may exempt the Minister from such service. The proceeds of the sale, after deduction of the costs, shall be kept by an authorized person in the manner prescribed by regulation until disposed of according to law.”

14. Section 13.6 of the said Act, enacted by section 13 of chapter 16 of the statutes of 1991, is replaced by the following section:

“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.”

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

“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.

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.”

16. Section 13.8 of the said Act, enacted by section 13 of chapter 16 of the statutes of 1991, is replaced by the following section:

“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.”

17. Section 14.2 of the said Act, enacted by section 14 of chapter 16 of the statutes of 1991, 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.”

18. The said Act is amended by inserting, after section 14.2, the following section:

“14.3 Every person who contravenes section 9.2 commits an offence and is liable to a fine of not less than \$200 and not more than \$1 000.”

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

“15. Every person who contravenes the provisions of this Act or the regulations, otherwise than as described in sections 14, 14.1, 14.2 and 14.3, commits an offence and is liable to a fine of not less than \$200 and not more than \$5 000.”

20. Section 15.1 of the said Act, replaced by section 15 of chapter 16 of the statutes of 1991, is again replaced by the following section:

“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.

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.

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 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.

Where the confiscation of packages of tobacco is ordered, the judge may authorize the Minister to destroy such packages in the manner prescribed by regulation.”

21. Section 15.2 of the said Act, enacted by section 15 of chapter 16 of the statutes of 1991, is repealed.

22. Section 17.2 of the said Act, amended by section 18 of chapter 16 of the statutes of 1991, is again amended by replacing the first paragraph by the following paragraph:

“17.2 The holder of a collection officer’s permit shall collect, as a mandatary 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.”

23. Section 17.10 of the said Act, enacted by section 21 of chapter 16 of the statutes of 1991, is replaced by the following section:

“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.

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

24. (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:

“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.

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.

25. 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.”

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

“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.

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.”

27. 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:

"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".

28. 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:

"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.

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."

29. 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:

"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."

30. 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:

"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.”

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

“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.”

32. Section 16.1 of the said Act, enacted by section 563 of chapter 67 of the statutes of 1991, is replaced by the following section:

“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 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.”

33. Section 16.2 of the said Act, enacted by section 563 of chapter 67 of the statutes of 1991, is amended by replacing the first paragraph by the following paragraph:

“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.”

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

“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.

“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.

“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.

“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.

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.

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.

“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.

“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.

“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.

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

“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.

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.

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

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

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

35. (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:

“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.

36. 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:

“30.1 The Minister may withhold the refund to which a person is entitled if the person has not, at the time the refund is determined, filed all the returns and reports that he was bound to file under a fiscal law or a regulation made under such a law.

The Minister may also require that any amount payable or about to become payable by a public body to such person, to a secured creditor of such person or to the transferee of a debt transferred by such person be withheld where, in the last two cases, the payment, if it were not secured or transferred, would have to be made to such person.

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.

“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.”

37. Section 31 of the said Act is amended by replacing the fourth paragraph by the following paragraph:

“Notwithstanding section 67.3 and the second paragraph of each of sections 68 and 68.1 of the Act respecting Access to documents held

by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), a regulation contemplated in the second paragraph may prescribe the conditions and modalities of the operations respecting the allocation provided for in the same paragraph and in particular the method of transmitting to the Ministère du Revenu the necessary accounting data and the order in which the allocations of the amounts contemplated in subparagraph *b* of the third paragraph must be made.”

33. The said Act is amended by inserting, after section 31.1, the following sections:

“31.1.1 Where a person owing an amount exigible under a fiscal law is also the creditor or beneficiary of an amount payable or about to become payable by a public body, 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.

The same applies where the amount payable by a public body is to be paid to a secured creditor of the person owing an amount exigible under a fiscal law, or to the transferee of a debt transferred by that person where the payment, if it were not secured or transferred, would have to be made to that person.

To that end, the Minister may require the payer or his agent to withhold and 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.

“31.1.2 For the purposes of the second paragraph of section 30.1 and section 31.1.1, where an amount is to be paid to a person by a public body as fees or under a contract other than a contract of employment, the body or its agent must inform the Minister thereof in accordance with the terms and conditions prescribed under section 31.1.5.

“31.1.3 The second paragraph of section 30.1 and section 31.1.1 do 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.

“31.1.4 For the purposes of the second paragraph of section 30.1 and 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 being as capital stock corporations or agencies of the Government, except the Société immobilière du Québec.

“31.1.5 The Government may make regulations to determine the terms and conditions governing the application of the second paragraph of section 30.1 and section 31.1.1, the information to be communicated for the purposes of the second paragraph of section 30.1 and sections 31.1.1 and 31.1.2 and, notwithstanding section 67.3, the second paragraph of section 68 and the second paragraph of section 68.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information, the terms and conditions respecting communication of that information.”

39. Section 69.1 of the said Act is amended

(1) by replacing subparagraph *a* of the second paragraph 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 the second paragraph of section 30.1 and section 31.1.1;”;

(2) by adding, at the end of the second paragraph, the following subparagraph:

“(d) every functionary, employee or agent of a public body within the meaning of section 31.1.4, and every employee or agent of the agent of such a body, in respect of information communicated to him in the performance of his duties under the second paragraph of section 30.1 and sections 31 and 31.1.1.”

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

“78.0.1 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 in 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.

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.

“78.0.2 Where a functionary has served a statement of offence to a person referred to in the second paragraph of section 78.0.1, a notice informing the person who committed the offence of the service of the statement must be sent to him within 15 days following the service. The notice shall be sent 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.

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.”

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

“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.”

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

“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.”

43. Section 96 of the said Act, amended by section 606 of chapter 67 of the statutes of 1991, is again amended by replacing the second paragraph by the following paragraph:

“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

44. 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;”.

45. 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;”.

46. 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:

“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.”

47. Sections 30 and 31 of the said Act, 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, enacted by section 10 of chapter 15 of the statutes of 1991, are repealed.

ACT RESPECTING THE QUÉBEC SALES TAX AND AMENDING VARIOUS FISCAL
LEGISLATION

48. 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

49. Proceedings for the suspension, revocation or cancellation of a certificate or permit issued under a fiscal law, instituted before (*insert here the date of assent to this Act*), 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.

50. Any security required or deemed to be required by the Minister under a fiscal law before (*insert here the date of assent to this Act*) 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.

51. This Act comes into force on (*insert here the date of assent to this Act*).