



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 80

**An Act to amend the Tobacco
Tax Act in order to counter the
misappropriation of tax by intermediaries**

Introduction

**Introduced by
Mr Michel Gratton
Minister of Revenue**

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EXPLANATORY NOTES

The object of this bill amending the Tobacco Tax Act is to put an end to a form of misappropriation of public funds by intermediaries who appropriate amounts that should be collected as tax and remitted to the Minister.

For that purpose, the bill institutes collection officers who, as persons selling or delivering tobacco in Québec, are required to hold a registration certificate, to collect in most cases an amount equal to the tax upon selling tobacco to a person who does not have an agreement with the Minister and to remit that amount to the Minister.

The bill specifies the obligations of retail vendors and provides that a collection officer is personally liable for the payment of an amount equal to the tax where, for instance, he acquires tobacco from a collection officer who does not hold a registration certificate.

Other amendments to the Tobacco Tax Act allow the Minister to require a security as a condition for the registration of a collection officer who has no residence or place of business in Québec and to control the sale or delivery outside Québec of tobacco bearing the identification mark prescribed by the Minister so as to avoid non-payment of the tax.

Finally, this bill introduces a number of coercive measures and broader powers of search and seizure to ensure compliance with the Act.

Bill 80

An Act to amend the Tobacco Tax Act in order to counter the misappropriation of tax by intermediaries

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2) is amended by replacing paragraph 11 by the following paragraph:

“(11) “sale” includes ordinary contracts of sale and exchanges;”.

2. Section 3 of the said Act is replaced by the following sections:

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

“**3.1** No vendor may purchase or take delivery of tobacco in Québec from a person other than the holder of a registration certificate issued under this Act and in force at that time unless he has made an agreement with the Minister under section 17.”

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

“**5.1** The Minister may require, as a condition for the registration of a person who has no residence or place of business in Québec, security in the amount fixed by him.”

4. Section 11 of the said Act is replaced by the following section:

“11. Every retail vendor shall collect, as an agent of the Minister, the tax provided for in section 8 on every sale of tobacco that he makes.

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

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

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 collection officer holding a registration certificate, the Minister may require that the difference be remitted to him.”

5. The said Act is amended by inserting, after section 13, the following:

“13.1 All tobacco that is intended for sale for consumption in Québec and that is in Québec shall be identified by the persons designated by regulation, and in the manner and subject to the conditions prescribed by regulation.

“13.2 Every person who wishes to sell, deliver or cause to be delivered outside Québec tobacco identified under section 13.1 shall apply for the authorization of the Minister unless the person to whom the tobacco is sold or delivered is party to an agreement made with the Minister under section 17 or unless that tobacco is prescribed by regulation.

Every person who, contrary to the first paragraph, sells, delivers or causes to be delivered of identified tobacco outside Québec shall pay to the Minister a penalty equal to the amount of the tax which would have been payable under section 8 if the tobacco had been sold for consumption in Québec.

“DIVISION III.1

“EXAMINATION, INSPECTION AND SEIZURE

“**13.3** Any officer of the Sûreté du Québec or any person authorized by the Minister for such purposes may, without a warrant, at any time or place, stop a vehicle for inspection where he believes on reasonable grounds that it contains tobacco intended for sale for consumption in Québec and that neither the vendor nor the buyer holds the registration certificate prescribed by law or that the tobacco is not identified in accordance with section 13.1.

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

Where the person who carries out the inspection believes on reasonable grounds that tobacco found in the vehicle is intended for sale for consumption in Québec and that neither the vendor nor the buyer holds the registration certificate prescribed by law or that the tobacco is not identified in accordance with section 13.1, he may order that the vehicle not be moved until the Minister directs otherwise or until a judge rules on the application referred to in section 13.4, submitted by the Minister with reasonable dispatch, and until seizure is effected, where such is the case.

“**13.4** With the authorization of a judge of the Court of the Sessions of the Peace, which may be granted on an *ex parte* application following information under oath from a person who believes on reasonable grounds that there is in a place in Québec tobacco intended for sale for consumption in Québec and that neither the vendor nor the buyer holds a registration certificate prescribed by law or that the tobacco is not identified in accordance with section 13.1, the Minister may authorize in writing any public servant of the Ministère du Revenu or any other person he designates and any peace officer whom that public servant or person calls on for assistance to enter that place to search for and seize such tobacco and any vehicle or vending machine containing it.

Subject to the release of seizure by the Minister, the seized property shall remain in the custody of the person designated by the Minister for that purpose until, in accordance with section 15.1, it is confiscated or remitted to the owner.

“13.5 Notwithstanding section 13.4, where tobacco is seized, the Minister may apply to a judge of the Court of the Sessions of the Peace for an order for the sale of the tobacco within the time and subject to the conditions determined by the judge. The proceeds of the sale less the costs shall be kept by the person designated by the Minister until, in accordance with section 15.1, they are confiscated or remitted to the owner.”

6. Sections 14 and 15 of the said Act are replaced by the following sections:

“14. Every person who

(a) contravenes section 3; or

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

commits an offence and is liable to a fine of not less than \$200 nor more than \$5 000.

“14.1 Every person who

(a) contravenes section 3.1; or

(b) sells, delivers or has in his possession tobacco that is intended for sale for consumption in Québec and is not identified in accordance with section 13.1,

commits an offence and is liable to a fine of not less than \$2 000 nor more than \$10 000.

“15. Every person who contravenes the provisions of this Act or the regulations otherwise than as described in sections 14 and 14.1 commits an offence and is liable to a fine of not less than \$200 nor more than \$5 000.

“15.1 Where a court convicts a person of having contravened this Act, the seizure effected under section 13.4 and, where such is the case, under section 13.5 is maintained until the fine and costs, including the cost of custody, are paid.

If the fine and costs, including the cost of custody, are not paid within six months of the date of conviction, the proceeds referred to in section 13.5 shall be confiscated and applied to that payment and, where the sum is insufficient, the seized property shall be confiscated

and sold as prescribed by regulation. If the proceeds of the sale exceed the sum of the fine and costs, including the costs of custody and sale of the property, the balance shall be remitted to the person who owned the property when it was seized.

Every person, other than the offender, who wishes to revendicate, after the commencement of a prosecution the effect of which may be the confiscation contemplated in the second paragraph, the property seized and retained under section 13.4 or the proceeds referred to in section 13.5, may obtain the release thereof on presenting to the court before which such proceedings are taken, a petition stating his name, residence, and setting out under oath the nature of his right to the seized property.

The court may thereupon order, on such conditions as it determines, the release of the seized property and sale proceeds, if any."

7. Section 17 of the said Act is replaced by the following sections:

"17. In order to facilitate the collection and remittance of the tax imposed by this Act or to prevent the payment twice of such tax on the same tobacco, the Minister may make with any person holding a registration certificate such agreement in writing as he considers expedient.

"17.1 For the purposes of this Act, every wholesale vendor and every person, other than a retail vendor, who sells, delivers or causes to be delivered tobacco in Québec is a collection officer.

"17.2 Every collection officer holding a registration certificate shall collect, as an agent for 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 identified in accordance with section 13.1, unless the tobacco is prescribed by regulation or is delivered outside Québec for consumption outside Québec.

The requirement provided for in the first paragraph does not apply in respect of tobacco sold or delivered by a collection officer if he is exempted therefrom pursuant to the agreement he has made with the Minister under section 17.

Whether the price is stipulated to be payable in cash, with a term, in instalments or in any other manner, the amount contemplated in the first paragraph shall be collected at the time of the sale and on the total quantity that is the object of the contract.

“17.3 Every collection officer holding a registration certificate shall, not later than the fifteenth day in each month, report to the Minister, using the form prescribed by him, on the amounts he has collected or should have collected under section 17.2 during the preceding month and shall remit the amounts to him at the same time.

The report shall be made and sent to the Minister even if no sale of tobacco was made during the month.

Every collection officer who has made an agreement with the Minister under section 17 shall fulfill the requirement provided in the first paragraph according to the modalities and within the time provided in the agreement.

Notwithstanding the foregoing, a collection officer holding a registration certificate is not required to remit the amount collected in respect of tobacco he acquired from another collection officer holding a registration certificate where he has paid to that other officer the amount provided for in section 17.2 in respect of that tobacco.

If the amount collected in respect of the tobacco referred to in the fourth paragraph is greater than the amount he paid under section 17.2 to the other collection officer holding a registration certificate, the Minister may require that the difference be remitted to him.

“17.4 Every collection officer holding a registration certificate 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 remits the amount to a person who does not hold a registration certificate shall become a debtor of Her Majesty in right of Québec for that amount.

Every collection officer who does not hold a registration certificate in force 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 registration certificate.

Every collection officer who sells, delivers or causes to be delivered in Québec tobacco that is not identified in accordance with section 13.1 and is intended for sale for consumption 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.

The amounts provided for in this section are deemed to be duties within the meaning of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).”

8. Section 19 of the said Act is amended by repealing subsections 2 and 3.

9. Section 20 of the said Act is amended by repealing the second paragraph.

10. This Act comes into force on the day fixed by the Government.