



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 81

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

Introduction

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

**Québec Official Publisher
1986**

EXPLANATORY NOTES

The object of this bill amending the Fuel 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 fuel in Québec, are required to hold a registration certificate, to collect an amount equal to the tax upon selling fuel 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 dealers and provides that a collection officer is personally liable for the payment of an amount equal to the tax where, for instance, he acquires fuel from a collection officer who does not hold a registration certificate.

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

Bill 81

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 13 of the Fuel Tax Act (R.S.Q., chapter T-1) is amended by adding the following paragraphs:

“Notwithstanding the foregoing, the retail dealer is not required to render an account to the Minister, unless the latter so requires, nor to remit the tax collected in respect of sold fuel he acquired from a collection officer holding a registration certificate where he has paid to that officer the amount provided for in section 51.1 in respect of that fuel.

If the tax collected in respect of the fuel is greater than the amount he paid under section 51.1 to a collection officer holding a registration certificate, the Minister may require that the difference be remitted to him.”

2. Section 17 of the said Act is amended by replacing what precedes paragraph *b* by the following:

“**17.** Every person who brings or causes to be brought into Québec fuel acquired outside Québec, for use or consumption in Québec by such person or, at his expense, by another person, except that contained in the fuel tank installed as standard equipment to supply the engine of a motor vehicle, aircraft or vessel, shall

(a) immediately file a report with the Minister, using the form prescribed by him;”.

3. Section 23 of the said Act is amended by replacing the first paragraph by the following paragraph:

“23. No person may sell, deliver or transport fuel in Québec unless, upon his application, a registration certificate has been issued under this Act and is in force at that time.”

4. Section 28 of the said Act is replaced by the following sections:

“28. No person may sell or deliver fuel in Québec to a retail dealer or wholesale dealer who does not hold a registration certificate issued under this Act and in force at that time.

“28.1 No retail dealer or wholesale dealer may purchase or take delivery of fuel in Québec from a person who does not hold a registration certificate issued under this Act and in force at that time unless he has made an agreement with the Minister pursuant to section 51.”

5. Section 39 of the said Act is amended by replacing the second paragraph by the following paragraph:

“Where a motor vehicle, aircraft or vessel is stopped for the night elsewhere than in a public place and all activity related to its use has ceased, a person contemplated in the first paragraph shall not carry out any measurement or examination or take samples between 10 p.m. and 7 a.m. without a warrant.”

6. Section 40 of the said Act is replaced by the following sections:

“40. 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 motor vehicle used to transport fuel in Québec and order it not to be moved where he believes on reasonable grounds that fuel transported therein is intended for sale for consumption in Québec and that neither the dealer nor the purchaser holds the registration certificate prescribed by law.

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

“40.1 With the authorization of a judge of the Court of the Sessions of the Peace that 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, fuel intended for sale for consumption in Québec and that neither the dealer nor the purchaser

holds the registration certificate prescribed by law, 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 such place to search for and seize such fuel and any vehicle or receptacle containing it.

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

7. Sections 42 and 43 of the said Act are replaced by the following sections:

“**42.** Every person who

(a) contravenes section 23;

(b) removes, breaks or alters a seal affixed under section 36 or otherwise contravenes such section;

(c) refuses to permit the examination contemplated in section 38 or otherwise contravenes it; or

(d) neglects or omits to comply with stop signs set up by a person contemplated in section 39 or 40 or to obey the signals or orders of such a person, or otherwise contravenes such section,

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

“**43.** Every person who contravenes section 18, 28 or 28.1 commits an offence and is liable to a fine of not less than \$2 000 nor more than \$10 000.”

8. Section 48 of the said Act is replaced by the following section:

“**48.** Where a court convicts a person for having contravened this Act, the seizure made under section 40.1 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 conviction, 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 reverdicate, 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 40.1, may obtain its release 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.”

9. Section 50 of the said Act is amended by replacing subsection 1 by the following subsection:

“50. (1) Where an offence contemplated in section 42 or 43 has been committed, any person entrusted with the enforcement of this Act shall draw up a report of the offence.”

10. The said Act is amended by inserting, after the heading of Division X, the following section:

“50.1 For the purposes of this Act, every importer, every refiner and every person, other than a retail dealer, who sells, delivers or causes to be delivered fuel in Québec is a collection officer.”

11. Section 51 of the said Act is replaced by the following sections:

“51. 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 fuel, or to make the necessary deductions for evaporation or accidental loss of fuel, the Minister may make with any person holding a registration certificate such agreements in writing as he considers expedient.

“51.1 Every collection officer holding a registration certificate shall collect, as an agent of the Minister, an amount equal to the tax provided for in section 2 from every person to whom he sells, delivers or causes to be delivered fuel in Québec.

The requirement provided in the first paragraph does not apply in respect of fuel sold or delivered to a person who has made an agreement with the Minister under section 51 or in respect of fuel delivered outside Québec.

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.

“51.2 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 51.1 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 fuel was made during the month.

Every collection officer who has made an agreement with the Minister under section 51 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 sold fuel he acquired from another collection officer holding a registration certificate where he has paid to that other officer the amount provided for in section 51.1 in respect of that fuel.

If the amount collected in respect of the fuel referred to in the fourth paragraph is greater than the amount he paid under section 51.1 to the other collection officer holding a registration certificate, the Minister may require that the difference be remitted to him.

“51.3 Every collection officer holding a registration certificate who fails to collect the amount provided for in section 51.1 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 fuel in Québec shall become a debtor of Her Majesty in right of Québec for any amount provided for in section 51.1 which he collected or should have collected if he had held a registration certificate.

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

12. This Act comes into force on the date fixed by the Government.