



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 105

An Act respecting the application of certain fiscal provisions to a limited partnership operating asbestos mines

Introduction



**Introduced by
Mr Raymond Savoie
Minister for Mines and for Native People**

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EXPLANATORY NOTES

This bill establishes special rules regarding the application of the Mining Duties Act and the Taxation Act to the Asbestos mining, processing and marketing undertaking operated as a limited partnership under the firm name "LAB société en commandite".

For the purposes of the Mining Duties Act, the partnership and its members will be considered as the sole operator in respect of the operations of the undertaking. Accordingly, Division II of the bill modifies the application of certain rules provided by the Act for the computation of depreciation, development and investment allowances and for the deduction of certain expenses.

Thus, property to which the right of use has been assigned to the partnership by a member for the purposes of the undertaking will be deemed to be fully owned by the partnership for the purposes of computing the depreciation allowance and the investment allowance. In addition, the partnership will be permitted to include, in computing its development allowance, the expenses incurred by a member before joining the partnership and not previously deducted from the value of the output of the property to which is assigned the right of use to the partnership. Lastly, Division II will allow the partnership to deduct, in computing its annual profit, the expenses incurred by its members in respect of claims for damages.

For the application of the Taxation Act, the object of Division III of the bill is to allow for the formation and eventually, the dissolution of the partnership by rollover, without any fiscal repercussions.

For the same purpose, it is designed to allow the limited partnership to claim, in computing its income, the depreciated capital cost of the property belonging to the members and to which it has been assigned the right of use.

In addition, a member will be able to claim, in computing its income for the taxation year during which it will have assigned the right of use to such property to the partnership, depreciation in proportion to the number of days during which the property will have actually been in its possession.

The bill also prescribes that a member will be able to deduct, in computing its income, Canadian exploration and development expenses for the share it will receive in the division of the partnership income. A member will be entitled to claim the costs of interest or rent incurred in respect of property to which it will have assigned the right of use to the partnership for the purposes of the undertaking.

The bill also provides that the partnership will not be dissolved by the bankruptcy of a special partner nor by a judgment upholding the seizure of his share of the partnership. It also specifies that while the partnership lasts, a special partner's interest in it and property the right of use to which the partner has assigned to the partnership cannot be transferred or devolve to a third person except in a lump and on the condition that the third person assume all the obligations of the special partner under the partnership agreement.

Bill 105

An Act respecting the application of certain fiscal provisions to a limited partnership operating asbestos mines

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION

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

“member” means a general or special partner in the partnership;

“partnership” means a limited partnership formed pursuant to the Civil Code by agreement and the declaration of a firm name on 18 June 1986, under the firm name “LAB société en commandite”, for the purpose of operating the undertaking;

“right of use” means the exclusive right to occupy or use property rent-free for the purposes of the undertaking;

“undertaking” means the mining, processing or marketing of asbestos or of any product derived from asbestos ore.

DIVISION II

MINING DUTIES PAYABLE BY THE PARTNERSHIP

2. For the purposes of the Mining Duties Act (R.S.Q., chapter D-15), the partnership is deemed to be the sole operator in respect of

all the operations of the undertaking. However, in respect of any other operation, each member remains a separate operator.

The duties payable by the partnership under the said Act in respect of the operations of the undertaking shall be determined in accordance with the provisions of this Act.

3. For the purpose of computing the depreciation allowance and the treatment allowance provided for in the said Act, property to which the right of use has been acquired by the partnership from a member is deemed to have been purchased by the partnership, even if the member retains ownership thereof. In the case of leased property to which the right of use is acquired by the partnership from a member, the property is deemed to have been leased by the partnership, even if the member remains the lessee thereof, to the extent that the property would be allowable depreciable property if the member were a separate operator.

The member is deemed to dispose of the property and the partnership is deemed to become the owner or lessee thereof, as the case may be, on the day on which the member assigns the right of use thereto to the partnership. The property nevertheless remains property of the class to which it belonged before that date.

4. The proceeds of disposition for the member of property referred to in section 3 is deemed to be equal to the undepreciated cost of the property for the purposes of the depreciation allowance.

The cost of such property to the partnership is deemed to be equal to the capital cost of the property to the member for the purposes of the treatment allowance and depreciation allowance.

The cost of improvements made after the date of assignment of the right of use may be added, as the case may be, to the capital cost or to the undepreciated cost, as if the partnership were the owner of the improved property.

To a member of the partnership, the undepreciated cost of allowable depreciable property is equal to a fraction of the undepreciated cost to the member of all property of the same class. The fraction is equal to the proportion that the capital cost of the property to the member is of the capital cost to him of all property of that class.

5. For the purposes of section 10 of the Mining Duties Act, the partnership is deemed to have deducted, as depreciation allowance in respect of a property, an amount equal to the difference between the

capital cost of the property to a member and the undepreciated cost of the property to that member.

6. At the end of the fiscal year during which a member is deemed to have disposed of property in accordance with section 3 of this Act, he may deduct, as depreciation allowance or treatment allowance in respect of that property, an amount equal to a fraction of the amount he would be allowed to deduct if he were then in possession of the property.

The fraction is equal to the proportion that the number of days of the fiscal year prior to the date of assignment is of 365.

7. In computing the amount that it may deduct as development allowance pursuant to section 16 of the Mining Duties Act, the partnership may include the expenses incurred by a member before the date on which he became party to the partnership agreement with regard to the output of property the right of use to which he assigned to the partnership and not previously deducted from the gross value of the output of the property.

8. In computing the amount it may deduct as investment allowance pursuant to section 17 of the said Act, the partnership may include the expenses described in section 18 of the said Act incurred by a member in respect of the property the right of use to which he assigned to the partnership, less the amounts already deducted for that purpose by the member before the date on which he became party to the partnership agreement.

9. In computing its annual profit for a fiscal year, the partnership may deduct the expenses incurred during the year by a member in respect of any claim or possible claim for damages based on allegations of damage related to the member's products or based on representations made or guarantees provided in respect of such products, to the extent that they are deductible under section 8 of the said Act.

For the purposes of the deduction referred to in the first paragraph, the products of a corporation whose obligations a member may be liable for are deemed to be the member's products.

10. For purposes of the application of paragraph *m* of section 27 and paragraph *b* of section 27.1 of the said Act to the partnership and its members, no deduction under this Act shall be considered to be a subsidy or assistance.

11. For the purposes of sections 15 and 29 of the said Act, any transaction whereby a right of use is acquired from a member by the partnership in accordance with section 3 of this Act is not a transaction between related persons.

Notwithstanding section 35 of the said Act, a member of the partnership may claim a deduction for credit on duties, a deduction for deferrable credit on duties, a deduction for credit on duties for losses and the payment of a refundable credit on duties for losses in respect of operations unrelated to the undertaking.

DIVISION III

COMPUTATION OF INCOME FOR A TAXATION YEAR

12. This division applies for the purposes of the Taxation Act (R.S.Q., chapter I-3), the Act respecting the application of the Taxation Act (R.S.Q., chapter I-4), the Act respecting the application of the Taxation Act (1972, chapter 24) and the regulations made under the said Acts.

13. Where, at any particular time, the partnership acquires, from a corporation that is, immediately after the acquisition, a member of the partnership, a right of use in respect of property which, immediately before that time, is owned by the corporation, the partnership is deemed to acquire from the corporation, at that time, the property in respect of which the right of use is established rather than a right of use in respect of the property, and the corporation is deemed to dispose, at that time, of the property rather than a right of use in respect of the property, to the partnership.

14. Where the partnership improves or develops a property contemplated in section 13 and, were it not for the said section and this section, the partnership would own only a right of use in respect of the improvement or development, the partnership is deemed to be the owner of the improvement or development.

15. Where, at any particular time, a right of use mentioned in sections 13 and 14 and established in respect of a property is extinguished, the partnership is deemed to dispose of the property, at that time, to the corporation that had assigned the right of use in respect of the property to the partnership, and the corporation is deemed to acquire the property at the same time.

16. At the time of the dissolution of the partnership and notwithstanding section 619 of the Taxation Act, the partnership is deemed to receive, at the time of the disposition of property, made or deemed to be made by the partnership under section 15, to a corporation that is, immediately before the dissolution, one of its members, proceeds equal to the cost amount of the property, to the partnership, immediately before the disposition, and the corporation is deemed to acquire the property at a cost equal to the proceeds.

Where the property is a depreciable property of a prescribed class of the partnership, the proceeds referred to in the first paragraph are equal to the proportion of the undepreciated capital cost, immediately before the disposition, of the depreciable property of the prescribed class of the partnership in which the property is included, that

(a) the amount by which the aggregate

i. of the proceeds from the disposition of the property agreed upon pursuant to section 614 of the Taxation Act in respect of the disposition of the property, deemed to have been made to the partnership when the partnership was deemed to have acquired it under section 13, and

ii. of the capital cost, to the partnership, of every improvement or development carried out on the property by the partnership before that time,

exceeds the amount deemed to have been granted to the partnership in respect of the property under section 24, before that time, or

(b) in the case of depreciable property that is not deemed to have been acquired by the partnership under section 13 nor deemed to be an improvement or development on the property, the capital cost of the property to the partnership,

is of

(c) the aggregate of the amounts computed under paragraphs *a* and *b* in respect of all depreciable property of that class.

17. For the purposes of paragraph *a* of the second paragraph of section 16, the amount deemed to have been granted to the partnership in respect of any depreciable property, pursuant to section 24, before the time determined in that paragraph, is the proportion of the amount deducted before that time under section 23, by the corporation from which the partnership is deemed to have acquired the property pursuant to section 13, in respect of the property of the prescribed class in which the property was included immediately before the partnership was

deemed to acquire it pursuant to the said section 13, that the capital cost of the property to the corporation, at the last mentioned time, is of the capital cost to the corporation of all the depreciable property of the prescribed class that is, under section 13, deemed to have been disposed of by the corporation to the partnership.

18. For the purposes of sections 93 to 104, 130 and 130.1 of the Taxation Act and the regulations under paragraph *a* of section 130 of the said Act, where, at the time of its dissolution, the partnership disposes or is deemed to dispose, pursuant to section 15, to a corporation that is, immediately before the dissolution, one of its members, of depreciable property of a prescribed class and where the capital cost of the property, to the partnership, exceeds the proceeds it is deemed to receive, pursuant to section 16, in respect of the disposition of the property, the following rules apply:

(a) the capital cost of the property to the corporation is deemed to be the capital cost of the property to the partnership;

(b) the excess amount is deemed to have been granted to the corporation as depreciation for the taxation years preceding its reacquisition of the property.

19. Every corporation contemplated in section 16 is deemed to receive, as proceeds from the disposition of its interest in the partnership, an amount equal to the greater of

(a) the adjusted cost base of its interest in the partnership immediately before the dissolution of the partnership; and

(b) the aggregate of the amount of money it receives at the time of the dissolution of the partnership and the total amount, for the aggregate of the property which, at the time of the dissolution, is disposed of or deemed, under section 15, to be disposed of to the corporation, of the proceeds from the disposition that the partnership is deemed to receive pursuant to section 16.

20. For the purposes of the computation of the amount that a corporation that is a member of the partnership may deduct, pursuant to Part I of the Taxation Act, in computing its income for a taxation year, in respect of Canadian exploration and development expenses, Canadian exploration expenses and Canadian development expenses incurred by a person, hereinafter called the “predecessor”, from whom the member or a first successor corporation, within the meaning of section 378, 403 or 415.1 of the said Act, had acquired Canadian resource

property according to section 376, 378, 402, 403, 415 or 415.1 of the said Act and for the purposes of the computation of the depletion allowance of the member pursuant to section 360 of the said Act and the regulations made for the purposes of the said section, the share of the member in the portion of the partnership's income for any fiscal period of the partnership ending in the year, which is derived from the disposition of Canadian resource property or the production from mines situated in Canada may, notwithstanding paragraph *f* of section 600 of the said Act, be attributed to:

(a) the disposition of Canadian resource property owned by the predecessor immediately before the acquisition of the property by the member or the first successor corporation, as the case may be; or

(b) the production from mines situated in Canada in respect of which the predecessor had an interest or a right of removal immediately before the acquisition of the property by the member or the first successor corporation, as the case may be.

21. A member corporation of the partnership may deduct, in computing its income from a business or property for a taxation year, the amount of interest it pays or must pay in respect of the year, under a legal obligation, in relation to the financing of property to which the right of use was assigned by the corporation to the partnership, to the extent that the amount is reasonable and is related to the whole period for which the partnership has the right of use.

22. A member corporation of the partnership may deduct, in computing its income from a business or property for a taxation year, the amount of the rent it pays or must pay in respect of the year in relation to property it leases and places exclusively at the disposal of the partnership, to the extent that the amount is reasonable and is related to the whole period for which the property is placed exclusively at the disposal of the partnership.

23. A member corporation of the partnership may deduct, in computing its income from a business or property, for its taxation year in which it is deemed, under section 13, to dispose of property to the partnership, an amount not in excess of the proportion contemplated in the second paragraph of the amount by which

(a) the amount it would be entitled to deduct for the year, in the computation, as depreciation, pursuant to the regulations under paragraph *a* of section 130 of the Taxation Act, in respect of property

of the prescribed class in which the property would be included if the corporation still owned it at the end of the year, exceeds

(b) the amount it may deduct as such, for the year, in respect of property of the prescribed class contemplated in paragraph *a*.

The proportion referred to in the first paragraph is the proportion that the number of days in the said year that are included in the period ending on the day of the deemed disposition contemplated in section 13, is of the total number of days in that taxation year.

24. The amount deducted by a corporation for a taxation year pursuant to section 23, in respect of property it is deemed to dispose of to the partnership pursuant to section 13, is deemed to have been granted to the partnership, in computing its income from a business or property for the taxation years ending before the time referred to in section 13, as depreciation, pursuant to the regulations under paragraph *a* of section 130 of the Taxation Act, in respect of the property of the prescribed class of the partnership in which the property is included.

25. A corporation shall not deduct an amount for a taxation year pursuant to section 23 unless it files an election to that effect with the Minister of Revenue within the time prescribed in section 604 of the Taxation Act and all the other members of the partnership consent thereto within the same time.

DIVISION IV

GENERAL AND FINAL PROVISIONS

26. The partnership is not dissolved by the bankruptcy of a special partner nor by a judgment confirming the seizure of a special partner's share.

27. During the existence of the partnership, a special partner's interest in the partnership, his claims against the partnership, the general partner's shares possessed by him directly or indirectly and all the property the right of use to which he is required to assign to the partnership shall not be transferred or devolve to a third party except in the lump and on the condition that the third party assume all the special partner's obligations set forth in the partnership agreement and in any related agreement.

28. The Minister for Mines and for Native People is responsible for the administration of Division II of this Act; the Minister of Revenue is responsible for the administration of Division III.

29. This Act has effect from 18 June 1986.

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