
NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE

FOURTH SESSION

Bill 43

An Act respecting workers who derive income from gratuities

First reading



Introduced by
Mr Alain Marcoux
Minister of Revenue

EXPLANATORY NOTES

The object of this bill is to enable workers whose remuneration ordinarily includes gratuities, mainly restaurant workers, to receive benefits under the different social benefits plans in relation to the part of their income that is derived from gratuities. For that purpose, they will be obliged to declare their income from gratuities to their employer, so that he may make the various deductions at source prescribed by law. In this way, these workers will henceforth receive benefits corresponding to their real income.

The main amendments under this bill are to the Taxation Act, and are intended to require employees receiving, benefiting from or allocated gratuities to include them in computing their income, although not the portion of the gratuities passed on to other employees. They also require employees working in premises where meals or beverages are served, except cafeterias and fast food outlets, or making home delivery of such meals, to pay to their employer the difference between the gratuities they have received and those they have handed on to other employees.

On the other hand, this bill states that where the total of declared gratuities is under 8% of sales in the premises on which gratuities are expected, the employer will be required to allocate the difference between such amounts to the employees in the prescribed manner. However, the Minister of Revenue will be authorized to fix a percentage of less than 8% for an establishment or a particular category of its sales if he thinks necessary or if the employer so requests and justifies his request.

This bill also amends the Act respecting the Ministère du Revenu in order, first, to require an employer having employees described above working elsewhere than in a cafeteria or a fast food outlet to keep daily registers of gratuities furnished by the Minister of Revenue and put them at the disposal of the workers, and second, to determine fines and penalties for contraventions of the new provisions of law.

In addition, this bill amends the Act respecting Labour Standards to make it require the paysheet given an employee to show the amount of declared gratuities and of allocated gratuities. It also provides that in computing certain indemnities, gratuities are in certain cases part of the income of such an employee. The National Holiday Act is amended to the same effect. In this way, social benefits paid to such employees will never be less than those computed on the basis of the minimum wage increased by the gratuities.

This bill also amends the Act respecting the Régie de l'assurance-maladie du Québec and the Act respecting the Québec Pension Plan in order to provide that the wages on the basis of which the employer's and employee's contributions, if any, are computed, include the gratuities declared by the employee and those allocated by the employer. In this way, these employees will in future be entitled to social benefits corresponding to their real income.

Lastly, this bill amends the Meals and Hotels Tax Act to allow the Minister of Revenue to cancel or suspend the registration certificate of an employer who fails to comply with the law.

ACT AMENDED BY THIS BILL

- (1) the National Holiday Act (R.S.Q. chapter F-1.1);
- (2) the Taxation Act (R.S.Q., chapter I-3);
- (3) the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- (4) the Act respecting labour standards (R.S.Q., chapter N-1.1);
- (5) the Act respecting the Régie de l'assurance-maladie du Québec (R.S.Q., chapter R-5);
- (6) the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);
- (7) the Meals and Hotels Tax Act (R.S.Q., chapter T-3).

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 36 of the Taxation Act (R.S.Q., chapter I-3) is amended by replacing the first paragraph by the following paragraph:

“36. An individual shall, in computing his income for the year from an office or employment, include the amounts he receives or benefits from during that year or which are allocated to him for that year, and that are provided for in this chapter.”

2. The said Act is amended by inserting, after section 42, the following division and sections:

“DIVISION II.1

“GRATUITIES

“42.1. An individual shall, in computing his income, include the gratuities he receives or benefits from in any manner and the gratuities allocated to him under section 42.2.

Notwithstanding this section, an individual shall not include that part of the gratuities which he pays to another employee.

“42.2. Every person who employs an individual whose remuneration ordinarily includes gratuities and whose duties are performed wholly or partly in premises of an establishment, within the meaning of the Meals and Hotels Tax Act (R.S.Q., chapter T-3), where meals and beverages are served, except a cafeteria or a fast food outlet, or an individual whose duties wholly or partly consist in delivering meals

for consumption outside such an establishment, shall allocate to the employee for each pay period, if the employee does not belong to a class excluded by regulation, his share of the difference between 8% of the sales on which gratuities are expected for the preceding pay period, made in the premises or on delivery and imputable to such employees, and the total gratuities declared by the employees for the same period.

The person shall make the allocation in accordance with the terms and conditions of a written agreement to that effect between him and the employees or, failing such an agreement, in the manner prescribed by regulation.

“42.3. For the purposes of section 42.2, every individual contemplated in this section shall declare in writing to his employer, at the beginning of each pay period, for the preceding pay period, the difference between the gratuities he received or benefited from in any manner in the course of his duties in any premises or in making a delivery and the gratuities he paid to another employee.

Similarly, every person who operates an establishment within the meaning of the Meals and Hotels Tax Act (R.S.Q., chapter T-3), other than a cafeteria or a fast food outlet, in which an individual contemplated in section 42.2 who is not his employee works shall declare in writing to the individual's employer, at the beginning of each pay period, for the preceding pay period, the sales of his establishment on which gratuities were expected, which were made in any premises or on delivery and are imputable to such individuals, and the total number of hours worked in the establishment by all such individuals.

“42.4. The Minister may determine a lower percentage in respect of any establishment or a category of sales of an establishment than that mentioned in section 42.2 if he deems it necessary or if the person required to make the allocation requests it and establishes to the satisfaction of the Minister that 8% is too high in view of the circumstances.

In no case may the percentage determined under this section be lower than 5%.”

3. The said Act is amended by inserting, after section 1015.1, the following section:

“1015.2. For the purposes of section 1015, every person who employs an individual contemplated in section 42.2 is deemed to pay to the individual every gratuity he is required to allocate to him under section 42.2 or that the individual declares to him under the first paragraph of section 42.3.”

4. Section 4 of the National Holiday Act (R.S.Q., chapter F-1.1) is amended by adding the following paragraph:

“Notwithstanding the first paragraph, in the case of an individual contemplated in section 42.2 of the Taxation Act (R.S.Q., chapter I-3), the said indemnity is computed on basis of the minimum wage provided for in section 40 of the Act respecting labour standards (R.S.Q., chapter N-1.1) increased by gratuities declared and allocated under sections 42.2 and 42.3 of the Taxation Act, unless the employee’s conditions of employment entitle him to a higher indemnity.”

5. Section 34 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by adding the following subsection:

“3. Every person who employs an individual contemplated in section 42.2 of the Taxation Act shall keep the daily registers of gratuities put at his disposal by the Minister and furnish one to each of the employees who requests it.”

6. Sections 59, 60 and 61 of the said Act are replaced by the following sections:

“59. Every person who fails to file a return or report as and when prescribed by a fiscal law or a regulation made under such a law, or fails to furnish the register mentioned in subsection 3 of section 34, incurs a penalty of \$10 for each day during which the failure continues, up to \$2 500.

“59.1. Every person who fails to make the allocation prescribed in section 42.2 of the Taxation Act (R.S.Q., chapter I-3) incurs a penalty of 150% of the amount that has not been allocated.

“60. Every person who fails to file a return or report as and when prescribed by a fiscal law or a regulation made under such a law, or fails to furnish the register mentioned in subsection 3 of section 34, is guilty of an offence and, in addition to any other penalty provided by that fiscal law, is liable to a fine of at least \$25 for each day during which the failure continues.

“61. Every person who does not comply with or contravenes sections 20, 34 to 39 or 43, section 42.2 or 1015 of the Taxation Act (R.S.Q., chapter I-3) or sections 59 and 63 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9), is guilty of an offence and, in addition to any other penalty provided by this Act, is liable to a fine of not less than \$200 nor more than \$10 000, or both the fine and imprisonment for not over six months.”

7. Section 29 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended by replacing paragraph 5 by the following paragraph:

“(5) levy, upon employers, an amount not exceeding 1% of their total wage bill, including the wages they are deemed to pay pursuant to section 1015.2 of the Taxation Act (R.S.Q., chapter I-3), fix the maximum amount of wages that is subject to the levy, and the minimum wage bill that makes an employer subject to the levy; this regulation must fix the method and rate of the levy and the period for which it is exigible, and be accompanied with an estimated statement of receipts and expenditures of the Commission;”.

8. Section 46 of the said Act is amended

(1) by replacing the period at the end of subparagraph 11 of the first paragraph by a semicolon;

(2) by adding, at the end of the first paragraph, the following subparagraphs:

“(12) the amount of the gratuities declared by the employee in accordance with section 42.3 of the Taxation Act (R.S.Q., chapter I-3);

“(13) the amount of the gratuities he has allocated to the employee under section 42.2 of the Taxation Act.”

9. Section 50 of the said Act is amended by adding the following paragraph:

“However, an indemnity provided for in section 58, 62, 74, 76, 80, 81 or 83 is computed, in the case of an employee who is an individual contemplated in section 42.2 of the Taxation Act (R.S.Q., chapter I-3), on the basis of the minimum wage increased by the gratuities declared and allocated under sections 42.2 and 42.3 of the said Act, unless the employee’s conditions of employment entitle him to a higher indemnity.”

10. Section 34 of the Act respecting the Régie de l’assurance-maladie du Québec (R.S.Q., chapter R-5) is replaced by the following section:

“**34.** Every employer, on the date and in the manner prescribed, shall pay to the Minister of Revenue a contribution equal to 3% of the wages that he pays and that he is deemed to pay under section 1015.2 of the Taxation Act (R.S.Q., chapter I-3) to his employee who reports for work in his establishment in Québec or to whom those wages, if the employee is not required to report for work at an establishment of his employer, are paid or deemed paid from such an establishment in Québec.”

11. Section 50 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing paragraph *a* by the following paragraph:

“(a) his pensionable salary and wages for the year paid by his employer and the amount he is deemed to be paid by him under section 1015.2 of the Taxation Act, minus the amount prescribed as or on account of his personal exemption;”.

12. Section 5 of the Meals and Hotels Tax Act (R.S.Q., chapter T-3) is amended by replacing subsection 6 by the following subsection:

“(6) The Minister may also suspend or cancel the certificate of a person found guilty of an infringement of this Act or of an offence described in section 60 or 61 of the Act respecting the Ministère du Revenu.”

13. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

14. This Act comes into force on the day of its sanction and applies from 1 January 1984 in respect of pay periods beginning after 31 December 1983.