
NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE

FOURTH SESSION

Bill 52

**An Act to amend various fiscal laws in view
of instituting a new right of appeal for taxpayers**

First reading



Introduced by
Mr Alain Marcoux
Minister of Revenue

EXPLANATORY NOTES

The object of this bill is to institute a new right of appeal for individuals, except individuals who are bound as mandataries of the Minister, to deduct, withhold or collect an amount under a fiscal law or a regulation under such a law. Consequently, taxpayers who have objected, within the prescribed periods, to an assessment, decision or determination or if they contest the allocation of a payment within four years after it has been made, may elect to bring a summary appeal before the small claims division of the Provincial Court rather than appeal to the Court according to the rules governing ordinary actions.

The bill consequently extends the jurisdiction of the small claims division of the Provincial Court in order to allow it to hear summary appeals concerning Part I of the Taxation Act where the reduction in tax computed under Book V does not exceed \$1 650. It also allows the appeal from a decision relating to an allocation under the first paragraph of section 31 of the Act respecting the Ministère du Revenu not in excess of \$1 000. The competence of the court extends to the interest and penalties that are incidental to the object of the application. The amounts will be indexed on 1 January of every year.

This bill also prescribes the procedure for the inscription of a summary appeal before the small claims division of the Provincial Court as well as the procedure according to which it is heard. Consequently, for example, an advocate may not act as the mandatary or representative of one or the other of the parties. Furthermore, the summary appeal is heard in public unless the taxpayer requests that it be heard in camera.

Finally, this bill provides that the judgment rendered on the summary appeal is final and without appeal and has the authority of a final judgment in respect of the parties and for the amount claimed.

ACTS AMENDED BY THIS BILL

- (1) The Taxation Act (R.S.Q., chapter I-3);
- (2) The Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 65 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by adding the following paragraph:

“The same rule applies, *mutatis mutandis*, to a summary appeal brought in accordance with Chapter IV.”

2. The said Act is amended by inserting, after section 93.1, the following chapters and sections:

“CHAPTER IV

“SUMMARY APPEAL

“DIVISION I

“APPLICATION AND JURISDICTION

“93.2 An individual may bring a summary appeal before the small claims division of the Provincial Court sitting for the district in which he resides or for the district of Montréal, instead of instituting any other action before the Provincial Court, where the object of the summary appeal is

(a) for a taxation year, in the case of the application of Part I of the Taxation Act,

i. a reduction in computing the income or taxable income not exceeding \$5 000 and not arising from a loss incurred during the year or in any other taxation year, the amount of which exceeds \$5 000, or

ii. a reduction in the tax computed under Book V not exceeding \$1 650 and not arising from a loss described in subparagraph i;

(b) an allocation under the first paragraph of section 31 not exceeding \$1 000;

(c) exclusively the determination of interest or penalties not exceeding \$1 000.

“93.3 The jurisdiction of the Court is increased on 1 January each year by adjusting the amounts described in section 93.2 according to the percentage of increase in the prescribed ratio under section 694.1 of the Taxation Act.

The amounts are rounded to the nearest multiple of \$50.

“93.4 The jurisdiction of the court extends to the interest and penalties incidental to the object of a summary appeal even if the total amount exceeds, owing to the interest and penalties, the amount described in this division in respect of the object of the appeal.

“93.5 This chapter does not apply to an individual who is bound, as a mandatory of the Minister, to deduct, withhold or collect an amount under a fiscal law or a regulation under such a law.

“93.6 No individual may, to avail himself of this chapter, divide, directly or indirectly, the object of a right of action into so many objects that may give rise to summary appeal.

The first paragraph does not prevent any voluntary limitation of the object of a right of action so that it may give rise to summary appeal.

“93.7 Where a summary appeal and another action before the Provincial Court have wholly or partly the same object or relate to the same year, the summary appeal is null, as is any proceeding or judgment relating thereto.

“93.8 Where a summary appeal pending before the small claims division of the Provincial Court may be the object of another action before the Provincial Court, the parties may, before the hearing, file a consent in the office of the small claims division so that the record may be entered on the roll of the Provincial Court and dealt with according to the procedure governing ordinary actions before that court.

The same rule applies, *mutatis mutandis*, to allow any action pending before the Provincial Court to be continued before the small claims division.

“93.9 Following a motion filed with a judge of the Provincial Court by the Deputy Minister, a summary appeal may be entered on the roll of the Provincial Court to be dealt with in accordance with the procedure governing ordinary actions before that Court.

The motion is admissible only to the extent that the summary appeal could be brought by several persons concerned with the same series of transactions or events or if it bears on questions of fact or of law likely to affect any current or possible assessment, decision, determination or allocation.

“93.10 The jurisdiction conferred by this chapter is exercised only by the judges of the Provincial Court appointed every year by the chief judge or senior associate chief judge, each within his territorial jurisdiction.

“DIVISION II

“PROCEDURE

“93.11 An individual having objected to an assessment, decision or determination within the time limit prescribed by a fiscal law may bring a summary appeal within the time limit prescribed by the said law for appeal before the Provincial Court.

In the case of an allocation of payment, the individual may bring a summary appeal within the time limit prescribed by section 33.1.

“93.12 Where an individual was physically unable to act or to give a mandate to act in his name within the time limit to bring a summary appeal and not more than one year has passed from the first day on which such an appeal could have been brought, he may apply to a judge of the Provincial Court to extend the time limit, for a period not to go beyond the fifteenth day following the date of the judgment granting the extension.

“93.13 A summary appeal is exercised by means of the form prescribed to that effect, in which the individual shall set out the reasons for his application and all the relevant facts and which he shall file with or send by registered or certified mail to the office of the small claims division of the Provincial Court with \$20 to cover costs.

“93.14 Upon receipt of a summary appeal, the clerk shall immediately send two copies thereof to the Minister who shall then send to him without delay a copy of the notice of assessment, of the notice of objection and of the notification, and a copy of any other necessary document.

“93.15 If the court or a judge of the Provincial Court finds that the individual could not avail himself of this chapter, it or he shall order that the record be entered on the roll of the Provincial Court so that it may be dealt with in accordance with the procedure governing ordinary actions before that Court.

“93.16 The second and third paragraphs of articles 967, articles 969 and 970.1, the first paragraph of article 971 and articles 973, 974, 976 and 977 of the Code of Civil Procedure (R.S.Q., chapter C-25) apply, *mutatis mutandis*, to the hearing of any summary appeal.

Notwithstanding this section, no expert's testimony may be heard except pursuant to article 977 of the said Code.

“93.17 The hearing is public.

Notwithstanding this section, the court may order that the hearing be *in camera* whenever the individual requests it.

“93.18 Articles 955, 955.1 and 956 of the Code of Civil Procedure apply, *mutatis mutandis*, to parties to a summary appeal.

Articles 955 and 956 apply notwithstanding section 34 of the Charter of human rights and freedoms (R.S.Q., chapter C-12).

“93.19 Where the appeal regards the penalty prescribed in section 1049 of the Taxation Act, the burden of proof concerning the facts contemplated in the said section is on the Minister.

“93.20 The court may dismiss the summary appeal or vacate or vary any assessment, decision, determination or allocation of payment, or refer it to the Minister for reconsideration.

The court shall not vacate or vary an assessment, a decision or a determination by reason only of any irregularity, informality, omission or error on the part of anyone in the observance of any non-peremptory provision.

“93.21 The first and second paragraphs of article 978 and articles 979 to 981, 990 and 991 of the Code of Civil Procedure apply, *mutatis mutandis*, to any judgment on summary appeal.

“CHAPTER V

“MISCELLANEOUS PROVISIONS”.

3. Divisions X, XI and XII of Chapter III of the said Act are renumbered I, II and III.

4. Section 1014 of the Taxation Act (R.S.Q., chapter I-3) is amended by inserting, after the first paragraph, the following paragraph:

“The same rule applies, *mutatis mutandis*, to a summary appeal brought under Chapter IV of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).”

5. Section 1030 of the said Act, amended by section 5 of chapter 20 of the statutes of 1983, is again amended by replacing subsection 1 by the following subsection:

“1030. (1) Every taxpayer shall, within 30 days from the date of mailing of a notice of assessment, pay to the Minister the taxes, interest and penalties exigible from him and then remaining unpaid, whether or not an objection to or an appeal or a summary appeal brought under Chapter IV of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) from the assessment is pending.”

6. Section 1071 of the said Act is amended by replacing the third paragraph by the following paragraph:

“When the three copies of such motion have been filed and the amount of \$20 mentioned in section 1072 has been paid, the clerk of the Court shall immediately send two copies thereof to the Minister who shall then send to him without delay a copy of the notice of objection and a copy of the notice of assessment or notification that is the object of the appeal.”

7. Section 1072 of the said Act is amended by replacing the first paragraph by the following paragraph:

“1072. Upon the filing of the motion, the taxpayer shall pay to the clerk of the Court an amount of \$20, which shall be repaid to him if his appeal is wholly or partly successful.”

8. Section 1078 of the said Act is amended by replacing subsection 1 by the following subsection:

“1078. (1) An appeal or a summary appeal brought under Chapter IV of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) shall not prevent the recovery, according to law, of the taxes, interest and penalties which are the object of the appeal.”

9. 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).

10. This Act will come into force on the date fixed by proclamation of the Government, except the provisions excluded by the proclamation, which will come into force on any later date fixed by proclamation of the Government.