



NATIONAL ASSEMBLY

FOURTH SESSION

THIRTY-SECOND LEGISLATURE

Bill 94

**An Act to amend various legislation
respecting restaurant and hotel workers
who derive income from gratuities**

Introduction

**Introduced by
Mr Robert Dean
Minister of Revenue**



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EXPLANATORY NOTES

This bill gives effect to the ministerial statement of 5 June 1984 by the Minister of Revenue concerning the Act respecting restaurant and hotel workers who derive income from gratuities assented to on 21 December 1983. On the whole, it maintains the objectives pursued by that Act, which aimed at maintaining a balance between social fairness and fiscal equity for such workers. Restaurant and hotel workers will still be entitled to the advantages of the various social benefit plans in respect of that part of their remuneration derived from gratuities. For that purpose, they will be required to include, in computing their income, any gratuities they receive and to declare the amount to their employers so that the latter may make the various deductions prescribed by law.

This bill amends the existing taxation scheme for restaurant and hotel workers, mainly by repealing the measures concerning the allocation of gratuities by the employer and the register of gratuities. Declared wages and gratuities will be considered for the purposes of indemnities payable to workers and contributions to pension and health insurance plans. In addition, employers' contributions in other respects will be based solely on the amount of wages paid, thus lessening the employer's tax burden.

To achieve those objectives, the bill amends the Taxation Act to require workers receiving \$ 300 or more annually in gratuities to file with their employers at the beginning of the year or of their employment an estimated statement of the amount they will receive as gratuities. For the purposes of tax or other deductions, this amount will be apportioned according to the number of pay periods applicable. Provisions are made to allow the Minister in certain circumstances, to approve, any other method agreed upon between a worker and his employer. The Government will prescribe, by regulation, the information that employers and operators will be required to furnish for the application of those measures.

This bill also amends the Act respecting the Ministère du Revenu to remove offences it creates respecting the allocation of gratuities and the register of gratuities.

It also amends the Workmen's Compensation Act and the Act respecting labour standards to provide that employers' contributions be based only on

the wages paid and that indemnities payable to workers be determined on the basis of the wages and gratuities declared. In that respect, a new standard is prescribed fixing the amount of indemnities at 7% of the gratuities declared.

Lastly, this bill amends the National Holiday Act for concordance purposes.

ACTS AMENDED BY THIS BILL

- (1) the Workmen's Compensation Act (R.S.Q., chapter A-3);
- (2) the National Holiday Act (R.S.Q., chapter F-1.1);
- (3) the Taxation Act (R.S.Q., chapter I-3);
- (4) the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- (5) the Act respecting labour standards (R.S.Q., chapter N-1.1).

Bill 94

An Act to amend various legislation respecting restaurant and hotel workers who derive income from gratuities

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 46 of the Workmen's Compensation Act (R.S.Q., chapter A-3), amended by section 1 of chapter 43 of the statutes of 1983, is again amended by replacing the first paragraph of subsection 2 by the following paragraph:

“(2) The Commission shall determine the income of the worker, on the basis of his earnings, including, where such is the case, his gratuities declared under section 1015.3 of the Taxation Act (R.S.Q., chapter I-3), during the twelve months preceding his accident if his employment was not less than twelve months in the employ of the same employer, or during any other shorter period during which he was in the employ of his employer, according to the method it deems most appropriate to the circumstances.”

2. Section 88 of the said Act, amended by section 2 of chapter 43 of the statutes of 1983, is again amended

(1) by replacing the first paragraph of subsection 1 by the following paragraph:

“**88.** (1) Every employer shall yearly, on or before the date prescribed by the regulations of the Commission, prepare and transmit to the Commission a statement of the amount of the wages earned by all his employees during the twelve months preceding the date fixed by the Commission or any part thereof specified by the Commission and of the amount which he estimates he will expend for wages during

the then current year or any part thereof specified by the Commission, the number of employees contemplated in each case and such additional information as the Commission may require.”;

(2) by replacing subsection 2 by the following subsection:

“(2) For the purposes of this Act, every employer shall keep, in the usual form and with all the details required, a careful and accurate account of all wages paid to his employees, and, where such is the case, an account of the gratuities that his employees declare to him under section 1015.3 of the Taxation Act (R.S.Q., chapter I-3); such accounts shall be constantly kept within Québec and shall be produced to the Commission and its officers when so required.”;

(3) by replacing subsection 5 by the following subsection:

“(5) The Commission may, if the employer fails to furnish or delays in furnishing the statement prescribed by subsection 1 or furnishes an insufficient statement of the wages he has to pay to his employees, in addition to any other penalty provided by this Act, condemn the employer to pay, as the case may be, an additional amount of assessment or interest, as fixed by the Commission.”

3. Section 4 of the National Holiday Act (R.S.Q., chapter F-1.1), amended by section 6 of chapter 43 of the statutes of 1983, is again amended by striking out the second paragraph.

4. Section 36 of the Taxation Act (R.S.Q., chapter I-3), amended by section 3 of chapter 43 of the statutes of 1983, is again 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 and that are provided for in this chapter.”

5. Section 42.1 of the said Act, enacted by section 4 of chapter 43 of the statutes of 1983, is replaced by the following section:

“**42.1** An individual shall, in computing his income, include the gratuities he receives or benefits from in any manner.

Notwithstanding this section, an individual shall not include the gratuities redistributed to another employee.”

6. Sections 42.2 to 42.5 of the said Act, enacted by section 4 of chapter 43 of the statutes of 1983, are repealed.

7. Section 1015.2 of the said Act, enacted by section 5 of chapter 43 of the statutes of 1983, is replaced by the following sections:

“1015.2 For the purposes of section 1015, every person who employs an individual contemplated in section 1015.3 is deemed to pay to the individual the gratuities that the individual declares to him under section 1015.3.

“1015.3 An individual whose remuneration 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 or whose duties wholly or partly consist in delivering meals or beverages in the establishment outside such premises or outside the establishment shall declare to his employer the difference between the gratuities he receives or benefits from in any manner in the course of his duties in the premises or in making a delivery and those redistributed to another employee.

This section does not apply if the amount of gratuities that the individual must declare is less than \$300 a year.

“1015.4 The individual shall fulfil his obligation under section 1015.3 by estimating, at the beginning of the year or of his employment, his gratuities in the prescribed declaration.

The estimation is made

(a) by determining a percentage of the sales imputable to him for each pay period on which gratuities are expected;

(b) where the percentage of sales contemplated in paragraph *a* cannot be determined, by fixing, at the beginning of the year, an annual amount or, at the beginning of the employment, an amount for the remaining period of employment in the year, in which cases the amount is apportioned according to the number of pay periods applicable;

(c) by using any other method he and his employer have agreed upon and that is approved by the Minister.

Every change in the amount of gratuities declared under this section must be declared anew.

Notwithstanding the first paragraph, an individual who, on (*enter here the date of sanction of Bill 94*), is an individual referred to in section 1015.3, shall produce the prescribed declaration to his employer within a reasonable time after that date in respect of the period of employment remaining in the year.”

8. Section 1086 of the said Act is amended by inserting, after subparagraph *e* of the first paragraph, the following subparagraph:

“(e.1) prescribe, for the purposes of application of section 1015.3, the information that must be furnished by the employer of an individual

contemplated in section 1015.3 or a person who operates an establishment within the meaning of the Meals and Hotels Tax Act (R.S.Q., chapter T-3), indicate the person to whom the information must be furnished and prescribe the manner and time of its transmission;”.

9. Section 34 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), amended by section 7 of chapter 43 and by section 40 of chapter 49, of the statutes of 1983, is again amended by striking out subsection 3.

10. Section 59 of the said Act, replaced by section 8 of chapter 43 of the statutes of 1983, is again replaced by the following section:

“**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 shall incur a penalty of \$10 for each day during which the failure continues, up to \$2 500.”

11. Section 59.1 of the said Act, enacted by section 8 of chapter 43 of the statutes of 1983, is repealed.

12. Sections 60 and 61 of the said Act, replaced by section 8 of chapter 43 of the statutes of 1983, are again replaced by the following sections:

“**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, 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 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.”

13. Section 29 of the Act respecting labour standards (R.S.Q., chapter N-1.1), amended by section 9 of chapter 43 of the statutes of 1983, is again amended by replacing paragraph 5 by the following paragraph:

“(5) levy, upon employers, an amount not exceeding 1% of their total wage bill, 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;”.

14. Section 46 of the said Act, amended by section 10 of chapter 43 of the statutes of 1983, is again amended

(1) by replacing subparagraph 12 by the following subparagraph:

“(12) the amount of the gratuities declared by the employee pursuant to section 1015.3 of the Taxation Act (R.S.Q., chapter I-3).”;

(2) by striking out subparagraph 13.

15. Section 50 of the said Act, amended by section 11 of chapter 43 of the statutes of 1983, is again amended by replacing the third paragraph by the following paragraphs:

“However, the employer shall pay to an employee who is an individual contemplated in section 1015.3 of the Taxation Act (R.S.Q., chapter I-3), an indemnity equal to 7% of the gratuities declared in accordance with the said section.

The indemnity shall be paid to the employee in four instalments, namely, in the first pay period of the months of January, April, July and October of every year and, where such is the case, on the cessation of employment. Each instalment shall correspond to the complete pay periods of the three months preceding the payment or to the period worked during the three months.

However, a collective agreement in force pursuant to the Labour Code (R.S.Q., chapter C-27) on *(insert here the date of assent to Bill 94)* shall continue to have effect until the date it is renewed, even if the standard prescribed in the third paragraph is not included in it.”

16. Section 99 of the said Act, replaced by section 12 of chapter 43 of the statutes of 1983, is again replaced by the following section:

“**99.** Where the employer fails to pay the other pecuniary benefits resulting from the application of this Act or a regulation, the Commission may claim these benefits on the basis of the usual hourly wage of the employee and, where such is the case, his gratuities declared under section 1015.3 of the Taxation Act (R.S.Q., chapter I-3).”

17. 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).

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