

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 65

An Act to amend the Fuel Tax Act

First reading
Second reading
Third reading

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L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTES

This bill provides amendments to the Fuel Tax Act (R.S.Q., c. T-1) designed to simplify the administration of the act, facilitate its interpretation by persons entitled to exemption from the tax or a reduced rate, and counteract the unlawful use of coloured fuel oil.

The bill clarifies certain definitions and certain provisions on exemptions from or claims for refund of tax for persons entitled to it.

It allows the establishment by regulation of the cases where certain fuels are tax exempt.

It makes specifications concerning the stocking, possession and handling of coloured fuel oil.

The bill gives a more precise description of offences under the act, and of their consequences for the owner or lessee of a motor vehicle, and introduces certain rules designed to facilitate proof.

Finally, the bill extends to wholesale dealers the compensation for losses due to evaporation now granted to retail dealers.

Bill 65

An Act to amend the Fuel Tax Act

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

1. Section 1 of the Fuel Tax Act (R.S.Q., c. T-1), amended by section 1 of chapter 28 of the statutes of 1978, is again amended:

(1) by replacing subparagraph *d* of the first paragraph by the following subparagraph:

“(d) “colouring”: the adding to fuel oil of any quantity of natural or chemical products furnished by the Minister for the purpose of colouring fuel oil;”;

(2) by replacing subparagraph *h* of the first paragraph by the following subparagraph:

“(h) “coloured fuel oil”: any fuel oil containing any quantity of natural or chemical products furnished by the Minister for the purpose of colouring fuel oil;”;

(3) by replacing subparagraph *o* of the first paragraph by the following subparagraph:

“(o) “filling station”: any pump, cistern, tank, store, vehicle, place or premises where gasoline is sold, or otherwise delivered, at retail, except if the delivery is effected solely by filling, or emptying gasoline into, the cistern of a tanker truck, railway tank car, or ship tanker;”.

2. Section 5 of the said act, amended by section 1 of chapter 27 of the statutes of 1978, is again amended:

(1) by replacing subparagraph *a* of the first paragraph by the following subparagraph:

“(a) when the gasoline was used to operate farm machinery, except a pleasure vehicle or truck, but only while the machinery was used for farm work, and provided that the principal occupation of the consumer is farming;”;

(2) by replacing subparagraph *b* of the first paragraph by the following subparagraph:

“(b) when the gasoline was used to operate a fishing boat, but only while the fishing boat was used for fishing and provided that the principal occupation of the consumer is fishing;”.

3. Section 9 of the said act is amended:

(1) by replacing paragraph *b* by the following paragraph:

“(b) coloured fuel oil used to operate farm machinery except a pleasure vehicle or truck, or to operate a stationary engine, but only while the machinery or the engine was used for farm work and provided that the principal occupation of the consumer is farming;”;

(2) by replacing paragraph *c* by the following paragraph:

“(c) coloured fuel oil used to operate a fishing boat or a stationary engine, but only while the boat or the engine was used for fishing and provided that the principal occupation of the consumer is fishing;”;

(3) by inserting, after paragraph *e*, the following paragraph:

“(f) bunker fuel, crude oil and fuel oil, including coloured fuel oil, acquired or used in the circumstances, for the purposes and to the extent determined by regulation.”

4. The said act is amended by inserting, after section 19, the following section:

“19.1 Coloured fuel oil shall not be stored in a tank supplying a propulsion engine, except where the fuel oil is used for the purposes provided for in subparagraph *c* of the second paragraph of section 7 and in paragraphs *a*, *b*, *c* and *f* of section 9.”

5. The said act is amended by inserting, after section 21, the following section:

“21.1 Coloured fuel oil shall not be stocked in a filling station, except where the coloured fuel oil is in a tank or a cistern used exclusively and directly to supply a building’s heating system.”

6. Section 42 of the said act is amended by replacing paragraph *a* by the following paragraph:

“(a) sells fuel in Québec without a registration certificate still in force;”.

7. The said act is amended by inserting, after section 43, the following section:

“43.1 Every person who,

(a) contrary to section 19, acquires or uses coloured fuel oil to supply the engine of a motor vehicle, aircraft or boat, except in the cases provided for in paragraphs *a*, *b*, *c* and *f* of section 9;

(b) contrary to section 19.1, has in his possession coloured fuel oil stored in a tank supplying a propulsion engine, except in the cases provided for in the second paragraph of section 7 and in section 9;

(c) contrary to section 20, destroys or removes or attempts to destroy or remove, in any manner, the colour or any other product identifying coloured fuel oil under this act;

(d) contrary to section 21, sells coloured fuel oil in a filling station;

(e) contrary to section 21.1, stocks coloured fuel oil in a filling station, unless the coloured fuel oil is in a tank or cistern used exclusively and directly to supply a building's heating system;

(f) contrary to section 22, fills, with coloured fuel oil, the tank supplying a propulsion engine, except in the cases provided for in subparagraph *c* of the second paragraph of section 7 and in paragraphs *a*, *b*, *c* and *f* of section 9; or

(g) unless with a refiner's registration certificate or with a permit issued for that purpose by the Minister or unless exempt from that obligation by regulation, blends, for the purpose of resale, taxable fuel with coloured fuel oil or with another non-taxable petroleum product,

is guilty of an offence and is liable, in addition to any other penalty provided for in any other provision of this act, to a fine of not less than one hundred nor more than one thousand dollars and, for a second offence, to a fine of three hundred to two thousand dollars and, for any subsequent offence, to a fine of one thousand to five thousand dollars; in this last case, the court may, in addition to the fine and costs, sentence the offender to imprisonment for not more than three months.”

8. The said act is amended by inserting, after section 45, the following sections:

“45.1 In any proceeding under this act, both the true delinquent and the owner or lessee of a motor vehicle or propulsion engine are personally liable for the fines imposed for an offence against this act, even if the offence was committed by another person and even if it cannot be shown that the latter person acted under the direction of that owner or lessee.

Proof that the offence was committed by a person employed by the owner or lessee of the motor vehicle or propulsion engine makes conclusive proof that the offence was committed with the authorization and under the direction of the owner or lessee.

At the option of the prosecuting party, the true delinquent and the owner or lessee of the motor vehicle or propulsion engine may be prosecuted jointly or separately, but both one and the other cannot be condemned for the same offence.

“45.2 In any proceeding under this act, a presumption exists that fuel oil identified as coloured fuel oil by an analysis made in conformity with this act of a sample taken from the tank used to supply the engine of a motor vehicle, aircraft or boat, was acquired and used to operate the motor vehicle, aircraft or boat. In the same proceeding, a presumption also exists that the tax established under sections 2 and 7 has not been paid in respect of the fuel oil found in the tank at the time the sample was taken, unless payment of the tax in respect of that fuel oil is established beyond all doubt by documentary evidence identifying the purchaser and the vendor of the fuel oil together with the place and date of the transaction and indication of the quantity of fuel oil sold.

“45.3 In any proceeding against a consumer of coloured fuel oil, it is not necessary, in order to justify a condemnation, to prove that coloured fuel oil was acquired and used in contravention of this act; it suffices to prove that the tank used to supply the engine of a motor vehicle, aircraft or boat contained, in contravention of this act, coloured fuel oil on the very day of the examination, audit or inspection provided for in sections 38 and 39.

“45.4 In any proceeding against a person under paragraph e of section 43.1, to justify a condemnation it suffices to prove that a tank or a cistern of a filling station other than that used exclusively and directly to supply a heating system contained, in contravention to this act, coloured fuel oil on the very day of the examination, audit or inspection provided for in sections 38 and 39.

"45.5 To prove that coloured fuel oil was acquired and used in contravention of this act, it is not necessary to make specific proof that coloured fuel oil was actually used, if the court is convinced that an operation that constitutes a mode of alienation actually took place or that the coloured fuel oil was to be used.

"45.6 If, in proceedings under this act, proof that a person is the registered owner of a motor vehicle is required, a copy of the registration certificate of that vehicle or an extract duly certified in accordance with subsection 6 of section 96 of the Highway Code (R.S.Q., c. C-24) is admissible as evidence."

9. The said act is amended by replacing section 53 by the following section:

"53. The Minister may pay compensation to retail dealers and wholesale dealers for gasoline losses due to evaporation, according to the terms and conditions established by regulation."

10. This act comes into force on the day of its sanction.