

THIRD SESSION
THIRTY-FIRST LEGISLATURE

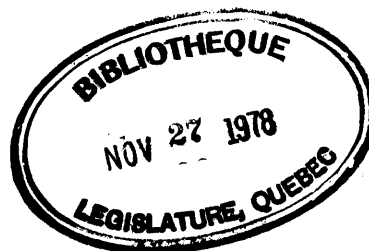
ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 102

An Act to amend the Revenue Department Act

First reading
Second reading
Third reading

M. JACQUES PARIZEAU
Ministre du Revenu



L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTE

The intent of the amendments proposed by this bill is to specify the procedures and other administrative measures provided by the Revenue Department Act. These amendments include provisions for concordance with other acts and certain corrections which have become necessary since the Revenue Department Act was passed.

Sec. 1. *The proposed amendment adds to the present text of the act, mention of the new Act respecting lotteries, racing, publicity contests and amusement machines.*

Sec. 2. *The proposed amendment confirms the validity of the notices of assessment issued or to be issued under the fiscal laws.*

Sec. 3. *The proposed amendment enables the destruction of the original documents of the Department upon their photographic reproduction.*

Bill 102

An Act to amend the Revenue Department Act

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

1972, c. 22,
s. 1, am. **1.** Section 1 of the Revenue Department Act (1972, chapter 22), amended by section 1 of chapter 17 of the statutes of 1974, is again amended by replacing paragraph *a* by the following paragraph:

‘fiscal
law’; “(a) “fiscal law”: this act, the Act to promote industrial development by means of fiscal advantages (Revised Statutes, 1964, chapter 67), the Act to authorize payment of allowances to certain self-employed workers (Revised Statutes, 1964, chapter 66), the Act respecting lotteries, racing, publicity contests and amusement machines (1978, chapter *insert here the chapter number of Bill 67*) or any other act imposing duties, the administration of which is entrusted to the Minister;”.

1972, c. 22,
s. 7, am. **2.** Section 7 of the said act is amended by adding at the end the following paragraph:

Validity of
notices. “Any notice of assessment and any notice attesting that no duty is payable, issued by virtue of a fiscal law before or after the coming into force of this act, is valid even if it bears only the printed, engraved or lithographed facsimile of the signature of the Minister or Deputy Minister.”

1972, c. 22,
s. 8a,
added. **3.** The said act is amended by inserting, after section 8, the following section:

Docu-
ments,
etc.,
destroyed. **“3a.** For the purposes of the application of the Photographic Proof of Documents Act (Revised Statutes, 1964, chapter 280), any document, book or register emanating from the Department

Sec. 4. *This amendment adds, as a new object of intergovernmental fiscal agreements, the suppression of double taxation.*

Sec. 5. *Section 12 of the act presently ends with the following paragraph:*

“Every amount owing to Her Majesty in right of the province of Québec under a fiscal law shall be a privileged debt ranking immediately after law costs.”

Sec. 6. *The first amendment proposed enables the Minister to claim an amount from a third person where the latter is about to become debtor to a taxpayer, as well as when he is already debtor to him.*

The second amendment provides, where necessary, for the assessment of the third person and the right such person has to contest that assessment before the courts.

Sec. 7. *The proposed amendment clarifies the present text of the act by adding the words “an amount equal to the amount thus deducted, withheld or collected”.*

or forming part of its records may be destroyed immediately after being reproduced, notwithstanding the delay provided by subparagraph *b* of the first paragraph of section 2 of the said act.”

72, c. 22,
9, re-
aced.

4. Section 9 of the said act, amended by section 2 of chapter 17 of the statutes of 1974, is replaced by the following section:

gree-
ent
thorized.

“**9.** The Minister may, in accordance with the Intergovernmental Affairs Department Act (1974, chapter 15) and with the authorization of the Lieutenant-Governor in Council, enter into any agreement with any government or body, consistent with the interests and rights of Québec, to facilitate the carrying out of a fiscal law, avoid double taxation or give effect to international fiscal agreements.”

72, c. 22,
12, am.

5. Section 12 of the said act is amended by replacing the last two lines of the last paragraph by the following lines: “fiscal law shall be a privileged debt secured by a legal hypothec and ranking immediately after law costs.”

72, c. 22,
15, am.

6. Section 15 of the said act, amended by section 3 of chapter 17 of the statutes of 1974, is again amended:

(a) by replacing the first paragraph by the following paragraph:

notice to
debtor.

“**15.** Subject to the provisions of the Code of Civil Procedure respecting exemption from seizure, where a person bound to make a payment under a fiscal law is or is about to become the creditor of another person, the Minister may, by a notice served upon the debtor, require that he pay to the Minister, on behalf of his creditor, all or part of the amount that he owes or that he will have to pay to the latter, such payment to be made at the time where the amount becomes payable to his creditor.”;

(b) by inserting, after the third paragraph, the following paragraph:

provisions
applicable.

“Sections 737 to 744, 765 and 768, 775 to 786 and 790 to 803 of the Taxation Act (1972, chapter 23) apply, *mutatis mutandis*, to the amounts payable to the Minister under the first and third paragraphs.”

72, c. 22,
20, am.

7. Section 20 of the said act is amended by replacing the second paragraph by the following paragraph:

separate
fund.

“Any such amount must be kept by the person who deducted, withheld or collected it, distinctly and separately from his own funds and in the event of a winding-up, assignment or bankruptcy, an amount equal to the amount thus deducted, withheld or collected must be considered to form a separate fund not form-

Sec. 8. *The proposed amendment orders a person who has collected, deducted or withheld any amount without authorization to remit it to the Minister; failure to do so is subject to penalty in the same manner as failure to remit duties legally exigible.*

Sec. 9. *The proposed section introduces new law. The third paragraph provides, where necessary, for the assessment of the transferee and for the appeal by the latter before the court.*

Sec. 10. *The proposed amendment declares that any agreement preventing an amount from being deducted, withheld or collected, or paid to the Minister, is null.*

Section 26 of the act presently reads as follows:

“26. Every agreement made to avoid a provision of a fiscal law requiring the deduction, withholding or collection of an amount is null.”

Sec. 11. *The proposed amendment results from a terminological change in the Taxation Act.*

ing part of the property subject to the winding-up, assignment or bankruptcy.”

1972, c. 22,
s. 24, am. **8.** Section 24 of the said act is amended by adding at the end the following paragraphs:

Absence of
legislative
provision. “The same obligation exists in respect of any amount that a person, whether in good faith or in bad faith, deducts, withholds or collects, believing or pretending that he is acting under a fiscal law.

Offence. Every person who has not complied with the second paragraph is guilty of an offence and liable to the same penalties as those which may be claimed in the case of failure to report and remit the duties exigible under the fiscal law concerned.”

1972, c. 22,
s. 24a,
added. **9.** The said act is amended by inserting, after section 24, the following section:

Transfert
of debts. **“24a.** Where a person transfers a debt including an amount of duties which must be but are not paid to the Minister in accordance with a fiscal law, the transferee is substituted for the transferor and becomes debtor to the Minister for such amount and, as the case may be, for the penalties and interest.

Payment
of sums
due. As such, he shall pay the sums due under the first paragraph to the Minister on behalf of the transferor, under the same terms and conditions and within the same delays as those the latter would have been bound to observe had the said transfer not occurred. However, in the case of a debt arising prior to the transfer, such terms and conditions begin to apply and such delays begin to run, with regard to the transferee, from the date of the transfer.

Provisions
applicable. Sections 737 to 744, 765 and 768, 775 to 786 and 790 to 803 of the Taxation Act (1972, chapter 23) apply *mutatis mutandis*.”

1972, c. 22,
s. 26, re-
placed. **10.** Section 26 of the said act is replaced by the following section:

Agree-
ment null. **“26.** Every agreement preventing the application of a provision of a fiscal law requiring the deduction, withholding or collection of an amount or the payment of an amount to the Minister, is null.”

1972, c. 22,
s. 34, am. **11.** Section 34 of the said act is amended by replacing the first paragraph of subsection 2 by the following paragraph:

Registers
and books
of accounts. **“(2)** Every registered charity within the meaning of section 1 of the Taxation Act (1972, chapter 23) and every prescribed

Sec. 12. *The proposed amendment introduces new law and specifies certain particulars to be given by taxpayers.*

Sec. 13. *The proposed amendment adds mention of the Broadcast Advertising Tax Act to the present text of the act.*

Sec. 14. *The proposed amendments introduce new law and are intended to better ensure the confidentiality of taxpayers' fiscal records.*

Canadian amateur athletic association shall keep, at a place designated by the Minister, registers and books of account, including a duplicate of each receipt containing the prescribed information."

1972, c. 22,
s. 58*a*,
added.

12. The said act is amended by inserting, after section 58, the following section:

Information in
respect of
identification.

"58*a*. The Minister may require that a person furnish, in any return, report or other document exigible under a fiscal law, prescribed information in respect of his identification or that of another person contemplated in such return, report or other document.

Identification
number.

The Minister may also require that the persons contemplated in the first paragraph obtain a prescribed identification number."

1972, c. 22,
s. 64, re-
placed.

13. Section 64 of the said act, amended by section 6 of chapter 17 of the statutes of 1974, is replaced by the following section:

Reserve.

"64. When a person has been convicted of an offence under section 62, he is not liable, for the same tax evasion or attempted tax evasion, to any penalty provided by sections 772 and 773 of the Taxation Act (1972, chapter 23), section 22 of the Retail Sales Tax Act (Revised Statutes, 1964, chapter 71), section 7*b* of the Meals and Hotels Tax Act (Revised Statutes, 1964, chapter 73), section 52 of the Fuel Tax Act (1972, chapter 30), section 5*b* of the Telecommunications Tax Act (1965, 1st session, chapter 28), or section 11 of the Broadcast Advertising Tax Act (1977, chapter 29), unless such penalty has been imposed upon him before any proceedings have been instituted against him under the said section 62."

1972, c. 22,
s. 69, am.

14. Section 69 of the said act is amended:

(*a*) by inserting, after the second paragraph, the following paragraphs:

Testimony
by func-
tionary
prohibited.

"Notwithstanding any other law, no functionary is authorized, in the case of judicial proceedings other than criminal proceedings, to testify in respect of any information contemplated in the first paragraph or to produce a document obtained, written or compiled by or on behalf of the Minister for the purposes of a fiscal law.

Exception.

The preceding paragraph does not apply to proceedings between the interested party and the Sous-ministre du revenu, nor to proceedings initiated by the Procureur général in view of obtaining an injunction against the interested party under a fiscal law.

Sec. 15. *The proposed amendment specifies that the appeal from a penal judgment is made by a motion for leave to appeal.*

Sec. 16. *The proposed amendment introduces new law and simplifies penal procedure.*

Sec. 17. *The proposed amendment provides that the certificate of the Minister can also be issued by the Deputy Minister, who is a party to every fiscal judicial proceeding by virtue of sections 72 and 93 of the act.*

Inquiry
commis-
sion.

Where an inquiry commission constituted by the Government requires a functionary to testify before it, the testimony is given and, where such is the case, documents are produced exclusively *in camera*, and such testimony and documents shall not be mentioned in any document, report, stenographic note or recording of the commission, nor at the other public or *in camera* sittings thereof.”;

(b) by adding, after the last paragraph, the following paragraph:

“func-
tionary”.

“For the purposes of this section, the word “functionary” means any functionary or former functionary of the Ministère du revenu, as well as any person acting or having acted for or in on behalf of the Ministre du revenu or the Sous-ministre du revenu in order to assist them in the carrying out of the objects of a fiscal law or in any other task which may be incumbent on them in the performance of their functions.”

1972, c. 22,
s. 74, re-
placed.

15. Section 74 of the said act is replaced by the following section:

Appeal.

“74. The appeal shall be brought by motion for leave to appeal before one of the judges of the Court of Appeal, at the place where appeals of the district in which the judgment was rendered are brought. It shall be brought within thirty days after the date of judgment or conviction and shall be submitted to the Court of Appeal, composed of three judges, at its next sitting.

Leave to
appeal.

The motion for leave to appeal may be made by the prosecutor or by the offender.”

1972, c. 22,
s. 76a,
added.

16. The said act is amended by inserting, after section 76, the following section:

Continuous
offence.

“76a. Notwithstanding section 12 of the Summary Convictions Act, where, under a fiscal law, an offence is continuous, all the separate offences contemplated in subsection 4 of the said section may be charged in a single count.”

1972, c. 22,
s. 78, am.

17. Section 78 of the said act is amended by replacing the second paragraph by the following paragraph:

Delay for
prosecu-
tion.

“However, if the offender has knowingly made a false declaration or committed a fraud in filing a return or in supplying information contemplated by a fiscal law, penal proceedings may be brought against him more than five years after the commission of the offence, provided that they are brought less than one year after the date on which sufficient proof to warrant proceedings respecting the offence has come to the knowledge of the

Sec. 18. *The proposed amendments establish uniformity between service by a functionary of the Department and that by a bailiff, and allow the use of personal service or certified mail where registered mail is now mandatory.*

Sec. 19. *The proposed amendment replaces the personal address of the functionary signing an affidavit by the address of the office of the Department.*

Sec. 20. *The proposed amendments set up a proceeding protecting both the Department and the taxpayer against the consequences of the latter's not receiving a notice of assessment.*

The first paragraph of proposed section 87 is substantially similar to section 87 of the present act.

Minister or Deputy Minister; the certificate of the Minister or Deputy Minister as to the day on which such proof has come to his knowledge shall be *prima facie* proof of it."

1972, c. 22,
s. 80, re-
placed.

18. Section 80 of the said act is replaced by the following section:

Service.

"80. (1) Where a fiscal law or a regulation made under such a law provides for personal service of a document, service may be made by leaving the original of the document with the person for whom it is intended by a functionary of the Ministère du revenu or by a bailiff. Such service may be made by handing the original of the document to him in person, wherever he may be, or it may be made at his domicile, by leaving the original at his domicile or ordinary residence, with a reasonable person residing therein.

Service by
functionary.

Where the service is made by a functionary, he shall prepare an affidavit attesting:

(a) that the document concerned has been served;

(b) the date, place and name of the person upon whom service has been made.

*Prima
facie* proof.

That affidavit shall be accepted as *prima facie* proof of personal service of the document.

Service by
bailiff.

Where service is made by a bailiff, the certificate of service of the bailiff must be accepted as *prima facie* proof of personal service of the document.

Certified
mail.

(2) Where a fiscal law or a regulation made under such a law provides for the service or sending of a document by registered mail, such service or sending may also be made by certified mail or in the manner provided in subsection 1."

1972, c. 22,
s. 84, am.

19. Section 84 of the said act is amended by adding at the end the following paragraph:

Address
of signa-
tory.

"In any affidavit or other similar document signed by a functionary of the Department under a fiscal law or in the course of proceedings respecting a fiscal matter, the address of the office of the Department being the usual place of work of the signatory is a sufficient indication of his address."

1972, c. 22,
s. 87, re-
placed.

20. Section 87 of the said act is replaced by the following section:

Date of
mailing.

"87. For the purposes of a fiscal law, the date of mailing of a notice of assessment or the date of mailing of a notice attesting that no duty is payable is deemed, in the absence of any proof

Sec. 21. The proposed section provides for the notice to be given by a party to a fiscal trial who intends to produce an expert witness.

Sec. 22. The proposed amendment adds mention of the Broadcast Advertising Tax Act to the present text of the act.

to the contrary, to be the date indicated in such notice, unless it is set aside by the Minister or any person acting in his name.

Notice not
received.

Where, in a judicial proceeding respecting an assessment, the court is satisfied by evidence it considers conclusive that the person concerned has not received the notice of assessment and has thus suffered prejudice which is otherwise irreparable, the court shall order the Minister to serve a certified copy of the notice upon the person concerned.

Delay from
date of
service.

Such assessment is then deemed to have been made on the original date of the notice appearing in the records of the Department, but the delays provided by the fiscal laws in respect of the date of a notice of assessment or of the mailing of such a notice begin to run from the date of the service contemplated in the second paragraph."

1972, c. 22,
s. 93a,
added.

21. The said act is amended by inserting, after section 93, the following section:

Expert
witness,
notice.

"93a. In any civil proceeding under a fiscal law, the party who is first to wish to produce an expert witness must give notice thereof to the other parties at least thirty days before the date of the hearing. Any party wishing to produce counter-evidence by the testimony of an expert must give notice thereof to the other parties at least fifteen days before the date of the hearing.

Content of
notice.

In each case, the notice shall mention the profession of the witness, and his specialization, if any, and it must contain a statement of the allegations that the party intends to prove and a reasonably specific indication of the subject on which he will examine the witness."

1972, c. 22,
s. 95, am.

22. Section 95 of the said act, amended by section 8 of chapter 17 of the statutes of 1974, is again amended by replacing the second paragraph by the following paragraph:

Amount
determined
by Min-
ister.

"However, the Minister may determine or redetermine the amount of duties, interest and penalties under the Retail Sales Tax Act (Revised Statutes, 1964, chapter 71), the Tobacco Tax Act (Revised Statutes, 1964, chapter 72), the Meals and Hotels Tax Act (Revised Statutes, 1964, chapter 73), the Licenses Act (Revised Statutes, 1964, chapter 79), the Telecommunications Tax Act (1965, 1st session, chapter 28), the Fuel Tax Act (1972, chapter 30) and the Broadcast Advertising Tax Act (1977, chapter 29), and assess or reassess, as the case may be:".

Provision
declara-
tory.

23. Section 5 is declaratory except with regard to pending cases and any registration of a privilege under a fiscal law effect-

ed before the coming into force of this act is deemed to be the registration of a legal hypothec contemplated in section 5.

"taxation
year".

24. Section 11 applies to the taxation year 1978 and subsequent taxation years, the expression "taxation year" having the meaning given by section 1 of the Taxation Act (1972, chapter 23).

Coming
into force.

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