

1986, chapter 17

**AN ACT TO AMEND THE TOBACCO TAX ACT IN ORDER  
TO COUNTER THE MISAPPROPRIATION OF TAX  
BY INTERMEDIARIES**

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**Bill 80**

Introduced by Mr Michel Gratton, Minister of Revenue

Introduced 15 May 1986

Passage in principle 2 June 1986

Passage 19 June 1986

**Assented to 19 June 1986**

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**Coming into force: on the date fixed by the Government**

— 1 September 1986: ss. 1 to 10

G.O., 1986, Part 2, p. 2181

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**Act amended:**

Tobacco Tax Act (R.S.Q., chapter I-2)





## CHAPTER 17

### **An Act to amend the Tobacco Tax Act in order to counter the misappropriation of tax by intermediaries**

*[Assented to 19 June 1986]*

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. I-2, s. 2,  
am.

**1.** Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2) is amended by replacing paragraph 11 by the following paragraph:

“sale”

“(11) “sale” includes ordinary contracts of sale and exchanges;”.

c. I-2, s. 3,  
replaced

**2.** Section 3 of the said Act is replaced by the following sections:

Registration  
certificate

“**3.** No person may sell or deliver tobacco in Québec unless a registration certificate has been issued to him under this Act, upon his application, and is in force at that time.

Purchase of  
tobacco

“**3.1** No vendor may purchase or take delivery of tobacco in Québec from a person other than the holder of a registration certificate issued under this Act and in force at that time unless he has made an agreement with the Minister under section 17.”

c. I-2, s.  
5.1, added

**3.** The said Act is amended by inserting, after section 5, the following section:

Security  
from non-  
resident

“**5.1** The Minister may require, as a condition for the registration of a person who has no residence or place of business in Québec, security in the amount fixed by him.”

c. I-2, s. 11,  
replaced

**4.** Section 11 of the said Act is replaced by the following section:

Collection

**"11.** Every retail vendor shall collect, as an agent of the Minister, the tax provided for in section 8 on every sale of tobacco that he makes.

Account to  
Minister

Every retail vendor shall, not later than the fifteenth day in each month, render an account to the Minister in prescribed form of that tax he has collected or should have collected during the preceding month and shall remit to him at the same time the amount of that tax.

Exception

Notwithstanding the foregoing, a retail vendor is not required to render an account to the Minister, unless he demands it, or to remit to him the tax collected in respect of the sale of tobacco which he acquired from a collection officer holding a registration certificate where the retail vendor has paid to that officer the amount provided for in section 17.2 in respect of that tobacco.

Remittance  
of difference

If the tax collected in respect of the tobacco referred to in the third paragraph is greater than the amount the retail vendor paid under section 17.2 to a collection officer holding a registration certificate, the Minister may require that the difference be remitted to him."

c. I-2, ss.  
13.1-13.5,  
added

**5.** The said Act is amended by inserting, after section 13, the following:

Identifica-  
tion of  
tobacco

**"13.1** All tobacco that is intended for sale for consumption in Québec and that is in Québec shall be identified by the persons designated by regulation, and in the manner and subject to the conditions prescribed by regulation.

Authoriza-  
tion to sell

**"13.2** Every person who wishes to sell, deliver or cause to be delivered outside Québec tobacco identified under section 13.1 shall apply for the authorization of the Minister unless the person to whom the tobacco is sold or delivered is party to an agreement made with the Minister under section 17 or unless that tobacco is prescribed by regulation.

Penalty

Every person who, contrary to the first paragraph, sells, delivers or causes to be delivered identified tobacco outside Québec shall pay to the Minister a penalty equal to the amount of the tax which would have been payable under section 8 if the tobacco had been sold for consumption in Québec.

## "DIVISION III.1

## "EXAMINATION, INSPECTION AND SEIZURE

Inspection  
of vehicle

**"13.3** Any officer of the Sûreté du Québec or any person authorized by the Minister for such purposes may, without a warrant, at any time or place, stop a vehicle for inspection where he believes on reasonable grounds that it contains tobacco intended for sale for consumption in Québec and that neither the vendor nor the buyer holds the registration certificate prescribed by law or that the tobacco is not identified in accordance with section 13.1.

Restriction

However, if the vehicle is stopped for the night elsewhere than in a public place and all activity related to its use has ceased, no inspection of the vehicle may be carried out between 10 p.m. and 7 a.m. without a warrant by a person referred to in the first paragraph.

Order

Where the person who carries out the inspection believes on reasonable grounds that tobacco found in the vehicle is intended for sale for consumption in Québec and that neither the vendor nor the buyer holds the registration certificate prescribed by law or that the tobacco is not identified in accordance with section 13.1, he may order that the vehicle not be moved until the Minister directs otherwise or until a judge rules on the application referred to in section 13.4, submitted by the Minister with reasonable dispatch, and until seizure is effected, where such is the case.

Search and  
seizure

**"13.4** With the authorization of a judge of the Court of the Sessions of the Peace, which may be granted on an *ex parte* application following information under oath from a person who believes on reasonable grounds that there is in a place in Québec tobacco intended for sale for consumption in Québec and that neither the vendor nor the buyer holds a registration certificate prescribed by law or that the tobacco is not identified in accordance with section 13.1, the Minister may authorize in writing any public servant of the Ministère du Revenu or any other person he designates and any peace officer whom that public servant or person calls on for assistance to enter that place to search for and seize such tobacco and any vehicle or vending machine containing it.

Custody

Subject to the release of seizure by the Minister, the seized property shall remain in the custody of the person designated by the Minister for that purpose until, in accordance with section 15.1, it is confiscated or remitted to the owner.

Sale of  
seized  
tobacco

**“13.5** Notwithstanding section 13.4, where tobacco is seized, the Minister may apply to a judge of the Court of the Sessions of the Peace for an order for the sale of the tobacco within the time and subject to the conditions determined by the judge. The proceeds of the sale less the costs shall be kept by the person designated by the Minister until, in accordance with section 15.1, they are confiscated or remitted to the owner.”

c. I-2, ss.  
14, 15,  
replaced

**6.** Sections 14 and 15 of the said Act are replaced by the following sections:

Offence and  
penalty

**“14.** Every person who

(a) contravenes section 3; or

(b) neglects or omits to comply with stop signs set up by a person contemplated in section 13.3 or to obey the signals or orders of such a person, or otherwise contravenes that section,

commits an offence and is liable to a fine of not less than \$200 nor more than \$5 000.

Offence and  
penalty

**“14.1** Every person who

(a) contravenes section 3.1; or

(b) sells, delivers or has in his possession tobacco that is intended for sale for consumption in Québec and is not identified in accordance with section 13.1,

commits an offence and is liable to a fine of not less than \$2 000 nor more than \$10 000.

Offence and  
penalty

**“15.** Every person who contravenes the provisions of this Act or the regulations otherwise than as described in sections 14 and 14.1 commits an offence and is liable to a fine of not less than \$200 nor more than \$5 000.

Seizure  
maintained

**“15.1** Where a court convicts a person of having contravened this Act, the seizure effected under section 13.4 and, where such is the case, under section 13.5 is maintained until the fine and costs, including the cost of custody, are paid.

Confiscation

If the fine and costs, including the cost of custody, are not paid within six months of the date of conviction, the proceeds referred to in section 13.5 shall be confiscated and applied to that payment and, where the sum is insufficient, the seized property shall be confiscated

and sold as prescribed by regulation. If the proceeds of the sale exceed the sum of the fine and costs, including the costs of custody and sale of the property, the balance shall be remitted to the person who owned the property when it was seized.

Revendication of seized property

Every person, other than the offender, who wishes to revendicate, after the commencement of a prosecution the effect of which may be the confiscation contemplated in the second paragraph, the property seized and retained under section 13.4 or the proceeds referred to in section 13.5, may obtain the release thereof on presenting to the court before which such proceedings are taken, a petition stating his name, residence and setting out under oath the nature of his right to the seized property.

Release

The court may thereupon order, on such conditions as it determines, the release of the seized property and sale proceeds, if any.”

c. I-2, s. 17, replaced

**7.** Section 17 of the said Act is replaced by the following sections:

Agreement

“**17.** In order to facilitate the collection and remittance of the tax imposed by this Act or to prevent the payment twice of such tax on the same tobacco, the Minister may make with any person holding a registration certificate such agreement in writing as he considers expedient.

Collection officer

“**17.1** For the purposes of this Act, every wholesale vendor and every person, other than a retail vendor, who sells, delivers or causes to be delivered tobacco in Québec is a collection officer.

Collection

“**17.2** Every collection officer holding a registration certificate shall collect, as an agent for the Minister, an amount equal to the tax provided for in section 8 from every person to whom he sells, delivers or causes to be delivered tobacco identified in accordance with section 13.1, unless the tobacco is prescribed by regulation or is delivered outside Québec for consumption outside Québec.

Exemption

The requirement provided for in the first paragraph does not apply in respect of tobacco sold or delivered by a collection officer if he is exempted therefrom pursuant to the agreement he has made with the Minister under section 17.

Time of collection

Whether the price is stipulated to be payable in cash, with a term, in instalments or in any other manner, the amount contemplated in the first paragraph shall be collected at the time of the sale and on the total quantity that is the object of the contract.

Report to  
Minister

**“17.3** Every collection officer holding a registration certificate shall, not later than the fifteenth day in each month, report to the Minister, using the form prescribed by him, on the amounts he has collected or should have collected under section 17.2 during the preceding month and shall remit the amounts to him at the same time.

No tobacco  
sold

The report shall be made and sent to the Minister even if no sale of tobacco was made during the month.

Agreement  
under s. 17

Every collection officer who has made an agreement with the Minister under section 17 shall fulfill the requirement provided in the first paragraph according to the modalities and within the time provided in the agreement.

Exception

Notwithstanding the foregoing, a collection officer holding a registration certificate is not required to remit the amount collected in respect of tobacco he acquired from another collection officer holding a registration certificate where he has paid to that other officer the amount provided for in section 17.2 in respect of that tobacco.

Remittance  
of difference

If the amount collected in respect of the tobacco referred to in the fourth paragraph is greater than the amount he paid under section 17.2 to the other collection officer holding a registration certificate, the Minister may require that the difference be remitted to him.

Failure to  
collect

**“17.4** Every collection officer holding a registration certificate who fails to collect the amount provided for in section 17.2 or fails to remit to the Minister such an amount he has collected and is required to remit or remits the amount to a person who does not hold a registration certificate shall become a debtor of Her Majesty in right of Québec for that amount.

Failure to  
hold  
certificate

Every collection officer who does not hold a registration certificate in force at the time he sells, delivers or causes to be delivered tobacco in Québec shall become a debtor of Her Majesty in right of Québec for any amount provided for in section 17.2 which he collected or should have collected if he had held a registration certificate.

Unidentified  
tobacco

Every collection officer who sells, delivers or causes to be delivered in Québec tobacco that is not identified in accordance with section 13.1 and is intended for sale for consumption in Québec shall become a debtor of Her Majesty in right of Québec for an amount equal to the tax computed under section 8 in respect of that tobacco.

Deemed  
duties

The amounts provided for in this section are deemed to be duties within the meaning of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).”

c. I-2, s. 19, **8.** Section 19 of the said Act is amended by repealing subsections  
am. 2 and 3.

c. I-2, s. 20, **9.** Section 20 of the said Act is amended by repealing the second  
am. paragraph.

Coming into **10.** This Act comes into force on the day fixed by the Government.  
force