

1982, chapter 38
AN ACT TO AMEND VARIOUS FISCAL LAWS

Bill No. 74

Introduced by Mr Raynald Fréchette, Minister of Revenue

First reading: 27 May 1982

Second reading: 2 June 1982

Third reading: 21 June 1982

Assented to: 23 June 1982

Coming into force: 23 June 1982, except section 23, which will come into force on the date fixed by proclamation of the Government

— 1 January 1983: s. 23

G.O., 1983, Part 2, p. 93

Acts amended:

Succession Duty Act (R.S.Q., chapter D-13.2)

Retail Sales Tax Act (R.S.Q., chapter I-1)

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

Taxation Act (R.S.Q., chapter I-3)

Licenses Act (R.S.Q., chapter L-3)

Act respecting the Ministère du Revenu (R.S.Q., chapter M-31)

Fuel Tax Act (R.S.Q., chapter T-1)

Meals and Hotels Tax Act (R.S.Q., chapter T-3)



CHAPTER 38

An Act to amend various fiscal laws

[Assented to 23 June 1982]

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

R.S.Q.,
c. D-13.2,
s. 55, re-
placed.

1. Section 55 of the Succession Duty Act (R.S.Q., chapter D-13.2) is replaced by the following section:

Validity of
transfer.

“55. No transfer of property transmitted or deemed transmitted owing to the death of a person, except property prescribed by regulation, is valid or gives rise to a valid title with regard to that property until the Minister has delivered a disposal permit.

Permit.

The Minister shall issue that permit when the duties payable with respect to that property have been paid or are subject to guarantees he deems sufficient, or when no duty is exigible.”

R.S.Q.,
c. D-13.2,
ss. 57, 58,
repealed.

2. Sections 57 and 58 of the said Act are repealed.

R.S.Q.,
c. D-13.2,
s. 59, re-
placed.

3. Section 59 of the said Act is replaced by the following section:

Declara-
tion to
Minister.

“59. Every person who in any way transfers prescribed property referred to in section 55 or, if such property is a security, registers it in the books of a corporation, must file in duplicate with the Minister, within the first ten days of the month following the transfer or registration, a declaration in the form prescribed by the Minister containing the information required therein.

Declara-
tion to
Minister.

However, where the person making the transfer or registration is a corporation, trust or partnership referred to in section 53, the declaration provided for in the first paragraph replaces the declaration required under the said section 53 so far as it refers to the same property.”

R.S.Q.,
c. D-13.2,
s. 67, am.

4. Section 67 of the said Act is amended by replacing paragraph *b* by the following paragraph:

“(b) prescribing what property does not, to be validly transferred, require the issue of a disposal permit by the Minister;”.

R.S.Q.,
c. I-1, s. 2,
am.

5. (1) Section 2 of the Retail Sales Tax Act (R.S.Q., chapter I-1), amended by section 24 of chapter 12 of the statutes of 1981 and by section 1 of chapter 4 of the statutes of 1982, is again amended by replacing the second paragraph of paragraph 13 of the French version by the following paragraph:

“détaill-
lant”;

“*“détaillant” comprend aussi une personne qui, agissant comme représentant d’une maison d’affaires en dehors du Québec, sollicite, reçoit ou accepte de personnes résidant ordinairement au Québec ou y faisant affaires, des commandes de biens mobiliers pour livraison au Québec, aux fins d’usage et de consommation au Québec par elles-mêmes, lorsque la maison d’affaires qu’il représente n’est pas enregistrée comme détaillant au Québec;”.*

Effect.

(2) This section has effect from 1 April 1982.

R.S.Q., c.
I-1, s. 17,
am.

6. Section 17 of the said Act, amended by section 25 of chapter 12 of the statutes of 1981 and by section 3 of chapter 4 of the statutes of 1982, is again amended

(1) by replacing paragraphs *a* and *b* by the following paragraphs:

“(a) Sales of bonds, shares of a corporation, securities, moneys or any other similar intangible property;

“(b) Sales of gold or silver bullion exclusively for purposes of speculation;”;

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

“(g) Sales of vitamins, decoctions and the vegetable substances used in preparing them, foodstuffs and cider, and sales of beer in taverns;”.

R.S.Q.,
c. I-1,
s. 18.1,
added.

7. (1) The said Act is amended by inserting, after section 18, the following section:

Taxable
goods.

“18.1 For the purposes of paragraph *g* of section 17, the tax provided for by this Act applies to sales of candies, except maple sugar and maple taffy, and to sales of alcohol, beer elsewhere than in taverns, aerated water to which essence or syrup has been added, spirits or wine, the price of which is not taxed under the Meals and Hotels Tax Act (R.S.Q., chapter T-3).”

Effect.

(2) This section has effect from 1 March 1982.

R.S.Q.,
c. I-1,
s. 27, re-
pealed.
R.S.Q.,
c. I-1,
s. 29, am.

8. Section 27 of the said Act is repealed.

9. Section 29 of the said Act is amended by replacing the first paragraph by the following paragraph:

Registra-
tion certifi-
cate.

“29. No retailer shall institute or continue any proceedings in Québec for the recovery of a debt arising from the sale or delivery of property to a person who resides or carries on business therein, unless he holds a registration certificate issued under this Act.”

R.S.Q.,
c. I-2,
Div. V,
s. 16, re-
pealed.

10. Division V of the Tobacco Tax Act (R.S.Q., chapter I-2), consisting of section 16, is repealed.

R.S.Q.,
c. I-3, s. 8,
am.

11. Section 8 of the Taxation Act (R.S.Q., chapter I-3) is amended by replacing paragraph c by the following paragraph:

“(c) he was an ambassador, member of parliament, officer, high commissioner, minister, servant or senator of Canada, or an agent-general, officer or servant of a province and was resident in Québec immediately prior to election, employment or appointment by Canada or the province or received representation allowances in respect of the year;”.

R.S.Q.,
c. I-3,
s. 751, am.

12. Section 751 of the said Act is amended by replacing paragraph a by the following paragraph:

“(a) the table is to be divided into ranges of such amount as the Minister may determine and is to specify the tax payable on the taxable income within each range; and”.

R.S.Q.,
c. I-3,
s. 1014,
am.

13. (1) Section 1014 of the said Act, amended by section 182 of chapter 5 of the statutes of 1982, is again amended by replacing the second paragraph by the following paragraph:

Validity of
assessment.

“However, where a court vacates an assessment on the ground that it has been issued more than four years after the mailing of an original assessment, the assessment replaced by the assessment so vacated remains valid and binding, but any time prescribed by a fiscal law and applicable in regard thereto begins to run from the date of the judgment vacating the last assessment.”

Effect.

(2) This section has effect from 18 March 1982.

R.S.Q.,
c. I-3,
s. 1052, re-
placed.

14. (1) Section 1052 of the said Act, amended by section 13 of chapter 12 of the statutes of 1981, is replaced by the following section:

Interest on
overpay-
ment.

"1052. Where an overpayment by a taxpayer is refunded or applied on another liability, interest at the rate fixed in accordance with section 28 of the Act respecting the Ministère du Revenu is paid to him on such excess for the period ending on the day of such refund or application and commencing on the latest of the following dates:

(a) the day when the overpayment was made following a notice of assessment;

(b) the sixty-first day following the day when the excess was paid otherwise than following a notice of assessment;

(c) the sixty-first day following the day on or before which the tax return giving rise to the payment of the tax was required to be filed; or

(d) the sixty-first day following the day when the taxpayer filed such return."

Effect.

(2) This section has effect from 1 April 1982.

R.S.Q.,
c. I-3,
s. 1060, re-
placed.

15. (1) Section 1060 of the said Act, replaced by section 191 of chapter 5 of the statutes of 1982, is again replaced by the following section:

Applicabil-
ity of
s. 1057.

"1060. Section 1057 does not apply to the reassessment contemplated in section 1059 nor to an assessment issued following a waiver contemplated in subparagraph ii of paragraph *b* of subsection 2 of section 1010, unless the waiver was made within 4 years from the day of the mailing of the notice of first assessment or the notice that no tax is payable."

Effect.

(2) This section has effect from 18 March 1982.

R.S.Q.,
c. I-3,
s. 1066,
am.

16. Section 1066 of the said Act is amended by replacing what precedes paragraph *a* by the following:

Appeal to
Provincial
Court.

"1066. Where a taxpayer has served a notice of objection under section 1057, he may appeal to the Provincial Court sitting for the district in which he resides or for the district of Montréal to have the assessment vacated or varied after either".

R.S.Q.,
c. I-3,
s. 1066.1,
replaced.

17. (1) Section 1066.1 of the said Act, enacted by section 192 of chapter 5 of the statutes of 1982, is replaced by the following section:

Appeal
prohibited.

"1066.1 No appeal under section 1066 may be instituted in respect of an assessment issued by the Minister following a waiver contemplated in subparagraph ii of paragraph *b* of subsection 2 of section 1010, unless the waiver was made within 4 years from the

day of mailing of the notice of first assessment or the notice that no tax is payable.”

Effect. (2) This section has effect from 18 March 1982.

R.S.Q.,
c. L-3,
s. 38, re-
pealed.

18. Section 38 of the Licenses Act (R.S.Q., chapter L-3) is repealed.

R.S.Q.,
c. M-31,
s. 5, am.

19. Section 5 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by adding the following paragraphs:

Incompati-
bility.

“However, notwithstanding any inconsistent provision of any Act, regulation, by-law or any collective agreement within the meaning of the Labour Code (R.S.Q., chapter C-27) or an arbitration award in lieu thereof, the Minister may object to the filling of a position in his department by a person who, during the preceding five years, has been convicted of or has pleaded guilty to an offence under a fiscal law of Canada, the Criminal Code, the Narcotic Control Act or the Food and Drugs Act (Statutes of Canada), to the extent that the offence is incompatible with the position to be filled, unless the person has been pardoned.

Decision.

The Minister shall transmit his substantiated decision to the person concerned and to the Office du recrutement et de la sélection du personnel de la fonction publique if a competition has been held.

Appeal.

Except where the position to be filled is of a casual nature, the person concerned, if he believes himself wronged by the decision of the Minister, may, within thirty days of the sending of the decision, appeal therefrom to the Commission de la fonction publique, which shall hear the appeal and decide it unless a collective agreement or an arbitration award in lieu thereof has given jurisdiction over such matter to another person, in accordance with section 116 of the Civil Service Act.”

R.S.Q.,
c. M-31,
s. 7, am.

20. Section 7 of the said Act is amended

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

Authen-
ticity.

“**7.** Subject to the fourth paragraph, no deed, document or writing shall bind the department or be attributed to the Minister unless it is signed by him, by the Deputy Minister or by a functionary authorized by regulation.”; and

(2) by replacing the fourth paragraph by the following paragraph:

Official in-
scription.

“A notice of assessment or a notice attesting that no duty is payable, made out by virtue of a fiscal law and unsigned, is valid, binds the department and is attributable to the Minister in the same

manner as if it were signed by him, if it bears an inscription of the official title of the Deputy Minister.”

R.S.Q.,
c. M-31,
s. 15, re-
placed.

21. Section 15 of the said Act is replaced by the following section:

Payment
on behalf
of creditor.

“**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 or sent to him by registered or certified mail, 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.

Payment
required
from in-
stitution.

Where a person bound to make a payment under a fiscal law is or is about to become the debtor of a banking or financial institution and has furnished security for his debt, and the institution has not yet paid its consideration for the debt, the Minister may, in the manner provided in the first paragraph, require that the institution pay to the Minister, on behalf of its debtor, all or part of the amount of the consideration.

Discharge.

The receipt given by the Minister to the person who has made a payment provided for in the first or second paragraph shall be a discharge of his obligation up to the amount paid.

Payment
required.

Every person who, notwithstanding the notice sent by the Minister as provided for in the first or second paragraph, discharges his debt or consideration is bound to pay to the Minister an amount equal to the obligation discharged up to the amounts exigible under a fiscal law.

Provisions
applicable.

Sections 1041, 1044 and 1051 to 1056 of the Taxation Act apply, *mutatis mutandis*, to the amounts payable to the Minister under the first, second and fourth paragraphs, and sections 1005 to 1014, 1057 to 1062 and 1066 to 1079 of the said Act apply, *mutatis mutandis*, to the amounts payable to the Minister under the fourth paragraph.

Presump-
tion.

When the Minister wishes to send a notice to a person under this section and that person is doing business under a firm name or in partnership with others, the notice is deemed to have been given to such person if it was addressed to the name of the firm or partnership concerned and it is deemed to have been served upon such person if it has been handed to any person of full age employed at the place of business of the addressee or sent to the addressee by registered or certified mail.”

R.S.Q.,
c. M-31,
s. 21, re-
placed,
s. 21.1,
added.
Repay-
ment.

22. Section 21 of the said Act is replaced by the following sections:

“21. Where a person has paid an amount to the Minister under a fiscal law other than the Taxation Act or when an amount deducted, withheld or collected under a fiscal law other than the Taxation Act has been remitted to the Minister on behalf of a person and no amount could be exacted from him under such law, or such amount exceeds the duties that he was bound to pay, the Minister shall, if the person has never been assessed in respect of such amount, repay him the amount so paid or the part that he was not bound to pay, if he makes a written application therefor, sent to the Deputy Minister by registered or certified mail, within four years from the date of payment.

Repay-
ment re-
fused.

“21.1 The refusal by the Minister to repay the amount claimed under section 21 or the fact of not responding to an application for repayment within 180 days following the date of mailing of the application is equivalent to a decision confirming a notice of assessment under section 1059 of the Taxation Act, and sections 1066 to 1079 of the said Act apply, *mutatis mutandis*, to the decision.”

R.S.Q.,
c. M-31,
s. 28, re-
placed,
s. 28.1,
added.
Rate.

23. Section 28 of the said Act is replaced by the following sections:

“28. Notwithstanding any inconsistent provision, a claim of the Crown, including interest and penalties, exigible under a fiscal law bears interest at the nominal rate of 19% per year. However, the Minister may determine a new rate of interest applicable to such claims.

New rate.

A new rate of interest determined by the Minister must be published in the *Gazette officielle du Québec* and comes into force on the date indicated therein; from that date, it replaces the rate previously in force.

Capitaliza-
tion.

“28.1 Where a fiscal law or a regulation made under such a law provides for the payment of interest, that interest is capitalized daily.”

R.S.Q.,
c. M-31,
s. 30, am.

24. Section 30 of the said Act, amended by section 22 of chapter 12 and section 17 of chapter 24 of the statutes of 1981, is again amended

(1) by replacing the period at the end of subparagraph *b* of the first paragraph by the following: “; and”; and

(2) by adding, at the end of the first paragraph, the following subparagraph:

“(c) in the case of a repayment of duties paid following a notice of assessment, the day on which the duties were paid.”

R.S.Q.,
c. M-31,
s. 33.1,
added.
Prescription.

25. The said Act is amended by inserting, after section 33, the following section:

“33.1 Notwithstanding any inconsistent provision but subject to the Crown Payments Prescription Act (R.S.Q., chapter P-18), the fiscal laws and the regulations made under such laws, a right of action for the recovery of duties, interest or penalties paid to the Government is prescribed by four years from the date of payment.”

R.S.Q.,
c. M-31,
s. 40, am.

26. Section 40 of the said Act is amended by replacing subsection 3 by the following subsection:

Examination
of
books.

“(3) The Minister shall, upon request, allow the examination of any document, book, register, paper or other thing seized, by its owner or the person in whose hands it was at the time of the seizure, or furnish a copy of it at their expense.

Costs.

In no case, however, may the costs exceed the costs of reproduction and transmission of the documents.”

R.S.Q.,
c. M-31,
s. 68.1,
added.
Illicit
establish-
ments.

27. The said Act is amended by inserting, after section 68, the following section:

“68.1 In addition to any recourse specially provided for any contravention of a fiscal law, the Deputy Minister may apply to a judge of the Superior Court to pronounce, against any person who keeps an establishment or place of amusement or carries on an activity for which a registration certificate, licence or permit is required, without holding such a certificate, licence or permit still in force, an injunction ordering the closing of the establishment or of any establishment in which that person carries on that activity, until such time as a registration certificate, licence or permit is issued to him and all the costs are paid.

Injunction.

The judge before whom the application for an injunction is presented may make any other order that he considers necessary to carry out the order of injunction.

Proof.

Proof that the person against whom an injunction is applied for keeps an establishment or place of amusement or carries on an activity for which a registration certificate, licence or permit is required, without holding such a certificate, licence or permit still in force, constitutes sufficient proof to grant the injunction.

Provisions
not applic-
able.

The provisions on injunctions in the Code of Civil Procedure do not apply to an application for an injunction under this section.”

R.S.Q.,
c. M-31,
s. 78, am.

28. Section 78 of the said Act is amended by replacing the second paragraph by the following paragraph:

Institution
of proceed-
ings.

“However, if the offender has committed an offence contemplated in section 62, 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 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 conclusive proof."

R.S.Q.,
c. M-31,
s. 86, re-
placed.
Authen-
ticity.

29. Section 86 of the said Act is replaced by the following section:

"86. Every document made out under a fiscal law and bearing the name in writing of the Minister, Deputy Minister or a functionary authorized by regulation is deemed a document signed, made and issued by the Minister, Deputy Minister or functionary unless it has been set aside by the Minister or any person acting on his behalf.

Authen-
ticity.

The same is true of a notice of assessment or a notice attesting that no duty is payable, if it bears an inscription of the official title of the Deputy Minister."

R.S.Q.,
c. T-1,
s. 49, re-
pealed.

30. Section 49 of the Fuel Tax Act (R.S.Q., chapter T-1) is repealed.

R.S.Q.,
c. T-3,
s. 1, re-
placed.
Interpreta-
tion:
"establish-
ment";

31. Section 1 of the Meals and Hotels Tax Act (R.S.Q., chapter T-3) is replaced by the following section:

"1. In this Act and the regulations,

(1) "establishment" means

(a) any establishment provided with special accommodation so that, for payment, lodging or food are habitually available there, excluding an establishment where, for payment by the week or by the month, lodging or food and lodging is or are habitually available, and excluding an educational, charitable, hospitalizing or sheltering institution or other similar institution;

(b) premises where alcoholic beverages are sold for consumption there;

(c) an autobus, a railway train or a ship, in Québec, on which meals or alcoholic beverages are served;

(d) an enterprise which sells, delivers or serves meals for consumption elsewhere; or

(e) a tavern within the meaning of section 27 of the Act respecting liquor permits (R.S.Q., chapter P-9.1);

"fiscal
law";

(2) "fiscal law" means any fiscal law within the meaning of paragraph a of section 1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31); and

"Minister".

(3) "Minister" means the Minister of Revenue."

R.S.Q.,
c. T-3,
s. 2, am.

32. (1) Section 2 of the said Act is amended by inserting, after paragraph 6, the following paragraph:

Exemption.

“(6.1) That tax is not imposed on the price of maple syrup, maple sugar or maple taffy sold in an establishment for consumption elsewhere;”.

Effect.

(2) This section has effect from 1 March 1982.

R.S.Q.,
c. T-3,
s. 5, am.

33. Section 5 of the said Act is amended

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

Application.

“(2) The application for a registration certificate shall be made in the manner determined by the Minister and contain the information required by him.”;

(2) by replacing subparagraph *c* of the first paragraph of subsection 7 by the following subparagraph:

“(c) owes duties, within the meaning of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).”; and

(3) by replacing the second paragraph of subsection 7 by the following paragraph:

Security.

“The amount of the security shall not exceed \$10 000 for the issue of a certificate.”

R.S.Q.,
c. T-3,
s. 9, re-
pealed.

34. Section 9 of the said Act is repealed.

Exception.

35. 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).

Coming
into force.

36. This Act comes into force on the day of its sanction, except section 23, which will come into force on any later date fixed by government proclamation.