



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 29
(1996, chapter 31)

**An Act to amend the Act
respecting the Ministère
du Revenu and other legislative
provisions**

**Introduced 15 May 1996
Passage in principle 3 June 1996
Passage 17 June 1996
Assented to 20 June 1996**

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EXPLANATORY NOTES

The primary purpose of this bill is to amend the Act respecting the Ministère du Revenu in order to resolve various problems of interpretation and application. Amendments are also made to the Taxation Act and to other fiscal laws.

Firstly, the Taxation Act is amended

(1) to allow the issue of a consequential assessment in all cases where the Minister of Revenue is required by law to issue an assessment notice with respect to another taxation year;

(2) to clarify the application of section 1011;

(3) to specify that a decision rendered by a judge of the Court of Québec under the second paragraph of section 1067 of the Act is a final judgment of that Court within the meaning of the Code of Civil Procedure; and

(4) to allow a person to apply to a judge of the Court of Québec, in practice court, for a review of a decision of the Minister of Revenue on the extension of the time for opposition.

Secondly, the Act respecting the Ministère du Revenu is amended

(1) to clarify the definition of the term “fiscal law” as well as the definition of the term “prescribed” and the related presumption;

(2) to dissipate any doubts as to the power of a person authorized under a tax collection agreement entered into under section 16.1 to detain alcoholic beverages destined for individuals in Québec;

(3) to allow the Minister of Revenue, under section 17.5, to suspend, revoke or refuse to issue a certificate or permit in the same circumstances as those in which security may be required under section 17.3;

(4) to provide that the four-year time limit for assessments runs from the later of the date on which the duties should have been paid and the date on which the return was filed;

(5) to prescribe that the tax debts of a person who has availed himself of the provisions on voluntary deposit bear interest at the legal rate;

(6) to permit the Minister of Revenue to waive the filing of a prescribed form or prescribed information;

(7) to make the Minister of Revenue responsible both for determining the cases in which documents or information may be transmitted to him by way of on-line filing or of a computer-generated medium and for determining the terms and conditions of such data transmissions;

(8) to empower the Minister of Revenue to require a person to file a return, whether or not the person is subject to the payment of a duty;

(9) to remove the enumeration of things that may be seized upon a search to allow for the seizure of any thing, whatever its nature, that may afford evidence of an offence;

(10) to remove any ambiguity as to when a search may be made;

(11) to permit the seizure of things that may afford evidence of an offence against a regulation made by the Government under a fiscal law;

(12) to specify the powers that may be exercised in penal matters by certain public servants of the Ministère du Revenu;

(13) to introduce a prescription period of eight years for certain offences;

(14) to introduce a measure allowing the Minister of Revenue to cancel charges imposed on a taxpayer or an agent under a fiscal law and to specify that a decision of the Minister in that regard is not subject to opposition or appeal; and

(15) to create and establish the operating rules of a collection fund for the financing of the recovery operations of the Centre de perception fiscale.

Thirdly, the Act respecting the Québec Pension Plan is amended so as to permit the Minister of Revenue to refund, even after more than four years, an amount to which a person is entitled under that Act.

Lastly, the Fuel Tax Act is amended so as to make search and seizure procedures under that Act consistent with those in effect under the Tobacco Tax Act.

LEGISLATION AMENDED BY THIS BILL:

- Tobacco Tax Act (R.S.Q., chapter I-2);
- Taxation Act (R.S.Q., chapter I-3);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);
- Fuel Tax Act (R.S.Q., chapter T-1).

Bill 29

An Act to amend the Act respecting the Ministère du Revenu and other legislative provisions

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TOBACCO TAX ACT

1. Section 13.4 of the Tobacco Tax Act (R.S.Q., chapter I-2) is amended by adding the following paragraph:

“No search under the first paragraph may commence before 7 a.m. or after 8 p.m. or on a non-juridical day, without the written authorization of the judge who authorized the search. Nor may any such search commence more than 15 days after being authorized.”

TAXATION ACT

2. (1) Section 1010.0.1 of the Taxation Act (R.S.Q., chapter I-3) is replaced by the following section:

“1010.0.1 Notwithstanding the expiry of the time limits prescribed in section 1010, where a reassessment must be made for a particular taxation year, the Minister may redetermine the tax, interest and penalties and make a reassessment for a subsequent taxation year, but only for the purpose of making an adjustment consequential upon the reassessment in respect of the particular taxation year.

Such a reassessment may or, where the taxpayer so requests in writing, shall be made on or before the day that is either one year after the day on which all rights of objection to the reassessment in respect of the particular taxation year expire or one year after the day a decision relating to the particular year is rendered following an objection, an appeal or a summary appeal brought under Chapter IV of the Act respecting the Ministère du Revenu (chapter M-31).”

(2) Subsection 1 applies to a reassessment or redetermination consequential upon an assessment in respect of another taxation year made after 20 June 1996 or made pursuant to a decision rendered after 20 June 1996 following an objection, an appeal or a summary appeal.

3. Section 1011 of the said Act is replaced by the following section:

“1011. For the purposes of paragraph *b* of subsection 2 of section 1010, the Minister shall not, in computing the income of a taxpayer upon a reassessment or additional assessment made after the expiry of the time limits provided for in paragraphs *a* to *a.1* of that subsection 2, include any amount other than an amount

(*a*) that can reasonably be regarded as having been the subject of a waiver referred to in subparagraph ii of paragraph *b* of subsection 2 of section 1010, unless the taxpayer establishes otherwise, or

(*b*) in respect of which the failure to include it in computing income resulted from misrepresentation attributable to negligence or wilful default or from fraud, on the part of the taxpayer, in filing the return or in supplying information under this Part, unless the taxpayer establishes otherwise.”

4. The said Act is amended by inserting, after section 1057.2, the following section:

“1057.3 A taxpayer may, before the expiration of 90 days after the day on which the Minister’s decision under section 1057.2 was mailed to the taxpayer, apply to a judge of the Court of Québec for a review of the decision.

The judge shall grant the application if, in his opinion, the taxpayer meets the conditions set out in sections 1057.1 and 1057.2. The judge’s decision is a final judgment of the Court of Québec within the meaning of the Code of Civil Procedure (chapter C-25).”

5. Section 1060 of the said Act is replaced by the following section:

“1060. Section 1057 does not apply to a reassessment under section 1059 or to an assessment issued by virtue of a waiver referred to in subparagraph ii of paragraph *b* of subsection 2 of section 1010,

unless the waiver was made within the period during which the Minister may reassess or make an additional assessment under paragraph *a*, *a.0.1* or *a.1* of subsection 2 of section 1010, as the case may be.”

6. Section 1067 of the said Act, amended by section 8 of chapter 36 of the statutes of 1995, is again amended by adding, at the end of the third paragraph, the following sentence: “The decision of the judge is a final judgment of the Court of Québec within the meaning of the Code of Civil Procedure.”

7. Section 1069 of the said Act, amended by section 9 of chapter 36 of the statutes of 1995, is again amended by striking out subparagraph *d* of the first paragraph.

ACT RESPECTING THE MINISTÈRE DU REVENU

8. The French text of section 1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by replacing the word “administration” in the last line of paragraph *a* by the word “application”.

9. Section 1.1 of the said Act is replaced by the following section:

“1.1 In any fiscal law, unless the context indicates otherwise, the word “prescribed” means, in the case of a form or information to be given on a form, prescribed by the Minister or the Deputy Minister and, in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation.”

10. Section 12 of the said Act is amended by inserting “subject to paragraph *b* of section 97.2,” after “law;” in the third line of the first paragraph.

11. Section 12.1 of the said Act is amended by striking out the third paragraph.

12. The English text of section 15 of the said Act is amended by replacing the words “if it were not secured” in the second paragraph by the words “but for the security or transfer”.

13. Section 16.2 of the said Act is amended by replacing the first paragraph by the following paragraph:

“16.2 Where a person brings or causes to be brought into Québec corporeal property for which duties provided for by a fiscal law are payable, or where a person acquires an alcoholic beverage in Québec from a person authorized under section 19.1 of the Act respecting the Société des alcools du Québec (chapter S-13), and the person refuses or fails to file the return required under such a fiscal law or to obey a request for payment made by a person authorized under section 16.1, the authorized person may detain the property or beverage and deposit it at the place specified by the Minister who shall keep it as security until the duties and, where applicable, the maintenance expenses arising from the deposit are paid.”

14. Section 16.3 of the said Act is amended by adding the following paragraph:

“In the case of an alcoholic beverage, the Minister shall dispose of it by delivering it to the Société des alcools du Québec for sale purposes. The Société shall remit to the Minister the proceeds from the sale of the beverage, less 10%.”

15. Section 17.5 of the said Act is amended

(1) by inserting, after subparagraph *b* of the first paragraph, the following subparagraph:

“(b.1) is controlled by a director, officer or other person who has failed to pay to the Minister an amount he was bound to pay under section 1015 of the Taxation Act or under section 23, 24 or 24.0.1 or is controlled by a person one of whose directors or officers has failed to pay such an amount;”;

(2) by inserting “, b.1” after “*b*” in the first line of the second paragraph;

(3) by inserting “, b.1” after “*b*” in the first line of the third paragraph.

16. Section 23 of the said Act is amended by adding the following paragraph:

“However, a person who does not make the withholding provided for in the said section 1015 shall pay interest on such amount as though the first paragraph were applicable. The interest shall cease to accrue on or before 30 April of the year following the year in which the withholding should have been made.”

17. Section 25 of the said Act is amended by replacing the second paragraph by the following paragraph:

“However, no such assessment may be made

(a) more than four years after the later of

i. the date on which the duties should have been paid, and

ii. the date on which the return was filed; or

(b) more than four years after the application for a refund was filed.”

18. Section 25.2 of the said Act is replaced by the following section:

“25.2 For the purposes of paragraph *a* of section 25.1, where a reassessment is made after the expiry of the time limit provided for in the second paragraph of section 25, the Minister shall not consider any amount other than an amount the omission or the inclusion of which results, unless the contrary is established by the person, from a false representation of the facts through carelessness or voluntary omission or from fraud committed by the person in rendering an account, in filing a return, an application for a refund or a report or in supplying information prescribed by a fiscal law.”

19. The said Act is amended by inserting, after section 28, the following section:

“28.0.1 Where a person avails himself of the provisions of the Code of Civil Procedure (chapter C-25) which relate to voluntary deposit, interest shall be computed at the rate provided for in article 644 of that Code.”

20. Section 35.4 of the said Act is replaced by the following section:

“35.4 A person contemplated in this division who has notified a notice of objection in respect of an assessment or who is a party to an appeal brought under a fiscal law shall keep the registers, books of account and vouchers necessary for the examination of the objection or appeal until the time for appeal provided for in sections 1066 and 1067 of the Taxation Act has expired or until judgment on the appeal is rendered and, where applicable, until the time for filing any further appeal has expired or until the judgment on any further appeal is rendered.”

21. The said Act is amended by inserting, after section 36, the following section:

“36.1 The Minister may, on the conditions he determines, waive the filing of a prescribed form, prescribed information, a voucher or any other document the filing of which would otherwise be required.

However, the Minister retains the right to revoke his waiver and to require the filing of any information or document referred to in the first paragraph within such time as he may determine.”

22. (1) Section 37.1 of the said Act, enacted by section 210 of chapter 1 of the statutes of 1995, is replaced by the following section:

“37.1 Any person who, in cases determined by the Minister, meets the terms and conditions determined by the Minister, may file a document or information required under a fiscal law by way of electronic filing or of a computer-generated medium.”

(2) Subsection 1 has effect from 1 January 1995.

23. Sections 37.2 and 37.4 of the said Act, enacted by section 210 of chapter 1 of the statutes of 1995, are repealed.

24. Section 39 of the said Act is amended by inserting “, whether or not he is subject to the payment of a duty, ” after “person” in the third line of the first paragraph.

25. Section 40 of the said Act is amended

(1) by replacing the first and second paragraphs by the following paragraphs:

“40. A judge of the Court of Québec may, on an application *ex parte* following an information laid in writing and under oath by a public servant of the Ministère du Revenu, for all purposes respecting the application of a fiscal law, authorize in writing any public servant of the Ministère du Revenu, or any other person whom he designates, to enter and search, by force if need be, any building, receptacle or place to search therein for any thing that may afford evidence of an offence against a fiscal law or a regulation made by the Government under a fiscal law, and to seize and remove any such thing and keep it until it has been produced in judicial proceedings; the public servant or the person authorized under this section may call upon the assistance of a peace officer.

The public servant who lays the information must have reasonable grounds to believe that the said offence is being or has been committed and that there are things that may afford evidence of the offence in the building, receptacle or place.”;

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

“The search may not commence before 7 a.m. or after 8 p.m. or on a non-judicial day, without the written authorization of the judge who authorized the search. Nor may it commence more than 15 days after being authorized.”

26. Section 40.1 of the said Act is amended

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

“**40.1** A public servant or designated person who enters and searches a building, receptacle or place in accordance with section 40 may seize and remove, in addition to that which is referred to in the said section, things which he believes, on reasonable grounds, to constitute evidence of the commission of an offence against a fiscal law or a regulation made by the Government under a fiscal law.”;

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

“The judge may authorize the Minister to retain the things for the inquiry purposes until they are produced in judicial proceedings, if he is satisfied that they may constitute evidence of an offence against a fiscal law or a regulation made by the Government under a fiscal law and that they were seized in accordance with this section.”

27. Section 40.2 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**40.2** The Minister shall, on request, allow the examination of any thing seized under section 40 or 40.1 by the person from whom it was seized or the person legally entitled to the thing or, where applicable, furnish a copy at his expense.”

28. (1) Section 59.0.2 of the said Act, amended by section 211 of chapter 1 of the statutes of 1995, is again amended by replacing the second paragraph by the following paragraph:

“Where the prescribed form is required to be filed in respect of work carried out on a building, structure or land used in the course of carrying on a business or for the purpose of earning income therefrom, the penalty is \$200 for each person in respect of whom any required information is not provided.”

(2) Subsection 1 applies in respect of work carried out after 30 June 1995.

29. (1) Section 59.0.3 of the said Act, amended by section 212 of chapter 1 of the statutes of 1995, is again amended by replacing the second paragraph by the following paragraph:

“In the case of information required to be provided to a person who is required to file a prescribed form in respect of work carried out on a building, structure or land used in the course of carrying on a business or for the purpose of earning income therefrom, the penalty is \$500.”

(2) Subsection 1 applies in respect of work carried out after 30 June 1995.

30. The said Act is amended by inserting, after section 72.4, the following sections:

“72.5 Where an offence against a fiscal law or a regulation made by the Government under a fiscal law has been committed, any person responsible for the enforcement of that Act may draw up an offence report.

A person authorized under section 38 or section 72.4 is, for the purposes of the Code of Penal Procedure, a person responsible for the enforcement of a fiscal law.

“72.6 A public servant of the Ministère du Revenu authorized by the Deputy Minister under section 72.4 may serve a statement of offence in accordance with article 21 of the Code of Penal Procedure.”

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

“However, penal proceedings for an offence under section 62 shall be prescribed eight years from the date on which the offence is committed.”

32. Section 87 of the said Act is amended

(1) by replacing the word “or” in the first line of the first paragraph by a comma;

(2) by inserting the words “or of a notice of a decision of the Minister under section 1059 of the Taxation Act” after the word “payable” in the second line of that paragraph.

33. Section 89 of the said Act is replaced by the following section:

“89. Any form or information to be furnished on a form described as a prescribed form or prescribed information is deemed to be a form or information prescribed by order of the Minister under a fiscal law, except if it is set aside by the Minister or a person authorized by him.”

34. (1) Section 94.1 of the said Act, replaced by section 16 of chapter 36 of the statutes of 1995, is amended

(1) by replacing its two paragraphs by the following paragraphs:

“94.1 The Minister may waive, in whole or in part, any interest, penalty or charge provided for by a fiscal law.

The Minister may also cancel, in whole or in part, any interest, penalty or charge exigible under a fiscal law.”;

(2) by adding, after the second paragraph, the following paragraphs:

“A decision of the Minister under this section is not subject to opposition or appeal.

A statistical summary of all waivers and cancellations under this section shall be tabled, each year, before the National Assembly, within the first 15 days of the following session.”

(2) Paragraph 2 of subsection 1, where it introduces the third paragraph of the said section 94.1, applies in respect of applications made after 16 June 1994.

35. (1) The said Act is amended by inserting, after section 97, the following:

“DIVISION II.1

“COLLECTION FUND

“**97.1** A Collection Fund is hereby established at the Ministère du Revenu for the purpose of financing recovery operations.

The Government shall determine the date on which the Fund begins to operate as well as its assets and liabilities. It shall also determine the nature of property and services to be financed by the Fund and the nature of the costs to be charged to the Fund.

“**97.2** The Fund shall be made up of the following sums, except interest:

(a) the sums collected in respect of the property and services financed by the Fund;

(b) the recovery charges provided for in section 12.1, in such proportion as is determined by the Government;

(c) the sums paid into the Fund by the Minister out of the appropriations granted for that purpose by Parliament;

(d) the sums paid into the Fund by the Minister of Finance pursuant to section 97.5 and the first paragraph of section 97.6.

“**97.3** The Government may, on the Minister’s proposal, to the extent and subject to the conditions determined by the Government, merge the Fund with another, change the name under which it has been established or terminate its activities.

“**97.4** The management of the sums constituting the Fund shall be entrusted to the Minister of Finance. The sums shall be paid to the order of the Minister of Finance and deposited with the financial institutions he designates.

Notwithstanding section 13 of the Financial Administration Act (chapter A-6), the Minister shall keep the books of account for and record the financial commitments chargeable to the Fund. He shall also certify that such commitments and the payments arising therefrom do not exceed, and are consistent with, the available balances.

“**97.5** The Minister, as the manager of the Fund, may borrow from the Minister of Finance sums taken out of the financing fund established under section 69.1 of the Financial Administration Act.

“97.6 The Minister of Finance may, with the authorization of the Government and subject to the conditions it determines, advance to the Fund sums taken out of the consolidated revenue fund.

The Minister of Finance may, conversely, advance to the consolidated revenue fund, subject to the conditions he determines, any part of the sums making up the Fund that is not required for its operations.

Any advance paid into a fund is repayable out of that fund.

“97.7 All expenses incurred for the carrying out of the Minister’s functions relating to the management of the Fund, including the remuneration and expenses pertaining to the social benefits and other conditions of employment of persons assigned, in accordance with the Public Service Act, to activities related to the Fund, shall be paid out of the Fund.

“97.8 All surpluses accumulated by the Fund shall be paid into the consolidated revenue fund on the dates and to the extent determined by the Government.

“97.9 Sections 22 to 27, 33, 35, 45, 47 to 49, 49.2, 51, 57 and 70 to 72 of the Financial Administration Act, adapted as required, apply to the Fund.

“97.10 The fiscal year of the Fund ends on 31 March.

“97.11 Notwithstanding any provision to the contrary, the Minister of Finance shall, in the event of a deficiency in the consolidated revenue fund, pay out of the Collection Fund the sums required for the execution of a judgment against the Crown that has become *res judicata*.”

(2) Subsection 1 has effect from 1 April 1996.

ACT RESPECTING THE QUÉBEC PENSION PLAN

36. Section 66 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing the third paragraph by the following paragraph:

“However, no assessment may be made by the Minister in respect of an employer after four years have elapsed from the day on which that amount should have been paid, unless the employer has engaged in misrepresentation or has committed fraud in supplying

the required information or unless a waiver has been filed with the Minister on the prescribed form.”

37. (1) Section 194 of the said Act is amended by adding, at the end, the following paragraph:

“The second paragraph shall not be construed as preventing the rectification of an entry after the expiry of the time referred to in that paragraph if the rectification results from the application of Title III.”

(2) Subsection 1 applies even to entries made more than four years before its coming into force.

FUEL TAX ACT

38. Section 39 of the Fuel Tax Act (R.S.Q., chapter T-1) is amended

(1) by replacing the word “officer” in the first line of the first paragraph by the word “member”;

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

“Unless a member of the Sûreté du Québec, a member of a municipal police force or the Minister, as the case may be, authorizes otherwise, the vehicle shall not be moved until a judge rules on the application referred to in section 40.1, which must be introduced with reasonable dispatch, and until the vehicle is seized, where applicable.”

39. Section 40 of the said Act is amended

(1) by replacing the word “officer” in the first line of the first paragraph by the word “member”;

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

“Unless a member of the Sûreté du Québec, a member of a municipal police force or the Minister, as the case may be, authorizes otherwise, the vehicle shall not be moved until a judge rules on the application referred to in section 40.1, which must be introduced with reasonable dispatch, and until the vehicle is seized, where applicable.”

40. Sections 40.1 to 40.6 of the said Act are replaced by the following sections:

“40.1 A judge of the Court of Québec or a justice of the peace having jurisdiction may, on an *ex parte* application following an information laid in writing and under oath by a public servant of the department who has reasonable grounds to believe that an offence against this Act is being or has been committed and that there is in a place in Québec a thing that may afford evidence of the offence or that is being or has been used in the commission of the offence, authorize in writing any public servant of the department, or any other person he designates, to search in that place for and to seize and remove that thing and, for those purposes, to enter any building, receptacle or premises in that place; the public servant or person so authorized may call upon the assistance of a peace officer.

Any public servant of the department may also apply for a telewarrant and make a search in accordance with articles 96 to 114 of the Code of Penal Procedure (chapter C-25.1) so as to search for, seize and remove a thing referred to in the first paragraph.

In addition, any public servant of the department who has reasonable grounds to believe that an offence against this Act is being or has been committed and that there is in a place in Québec a thing that may afford evidence of the offence or that is being or has been used in the commission of the offence, may search for, seize and remove that thing without having obtained the authorization provided for in the first paragraph or the telewarrant provided for in the second paragraph if the person in charge of the place consents to the search or in exigent circumstances within the meaning of article 96 of the Code of Penal Procedure.

No search under the first paragraph may commence before 7 a.m. or after 8 p.m. or on a non-judicial day, without the written authorization of the judge who authorized the search. Nor may any such search commence more than 15 days after being authorized.

“40.2 For the purposes of the first paragraph of section 40.1, the judge may grant his authorization on the conditions he indicates if he is convinced that there are reasonable grounds to believe that an offence against this Act is being or has been committed and that things which may afford evidence of the offence or which are being or have been used in the commission of the offence are in the place indicated in the information.

“40.3 The public servant or designated person who carries out a search in accordance with the first paragraph of section 40.1 may seize and remove, in addition to what is provided for in that paragraph, any other thing which he believes, on reasonable grounds, constitutes evidence of the commission of the offence described in the information or has been used in committing the offence, as well as any other thing in plain view to which section 40.1 applies.

The person shall, with reasonable dispatch, report the seizure to the judge who gave the written authorization under section 40.1 or, in his absence, to a judge of the same jurisdiction.

The judge may authorize the Minister to retain the things seized if he is convinced that they may constitute evidence of the commission of an offence against this Act or that they have been used in committing such an offence and that they have been seized in accordance with this section.

“40.4 Subject to a release of seizure by the Minister, any thing seized under sections 40.1 and 40.3 shall remain in the custody of a person designated by the Minister for that purpose until, in accordance with section 40.5, it is sold or, in accordance with section 48, it is confiscated or, in accordance with article 138 of the Code of Penal Procedure, subject to section 40.7.1, or in accordance with section 40.8, it is returned to a person entitled thereto.

However, the Minister may return a vehicle seized under section 40.1 or 40.3 to the person from whom it was seized if that person pays a deposit equal to the sum of the cash value of the vehicle and of the amount, determined on the day of payment of the deposit, of the costs of seizure and preservation fixed by regulation. Such deposit is payable in cash or in the manner prescribed by regulation, and shall be kept by an authorized person in the manner prescribed by regulation until disposed of according to law.

“40.5 Notwithstanding sections 40.1 and 40.3, where fuel or a vehicle is seized, a judge of the Court of Québec may, on the application of the Minister, authorize the Minister in writing to sell the fuel or vehicle or have it sold on the conditions determined in the authorization. An authorization concerning fuel must also provide for the keeping of samples in sufficient quantity to serve as evidence. Prior notice of not less than one clear day of the application must be served, where their identity is known, on the person from whom the fuel or vehicle was seized and on the persons who claim to have a right in the fuel or vehicle. The proceeds of the sale, after deduction

of the costs, shall be kept by a person authorized by the Minister in the manner prescribed by regulation until disposed of according to law.

“40.6 A thing seized under section 40.1 or 40.3, a deposit referred to in section 40.4 or sale proceeds referred to in section 40.5 shall not be retained for more than 180 days from the date of seizure, unless proceedings have been instituted or an extension order has been granted.”

41. The said Act is amended by inserting, after section 40.7, the following section:

“40.7.1 Where, in accordance with the provisions of article 138 of the Code of Penal Procedure, an application for the return of a thing seized under section 40.1 or 40.3 or of the proceeds referred to in section 40.5 is made by a person who claims to have a right therein and who is not the offender, the judge may order the return on the conditions he indicates if he is convinced that, in addition to what is provided for in article 138 of the Code of Penal Procedure, the thing or proceeds need not be retained for the purposes of this Act or that confiscation is not required under section 48.

The judge may also, in such a case, order the person to pay the costs of seizure and preservation fixed by regulation.”

42. Section 40.8 of the said Act is replaced by the following section:

“40.8 The Minister must return the thing seized, the deposit referred to in section 40.4 or the proceeds referred to in section 40.5 to the person from whom the thing was seized as soon as retention thereof is no longer necessary in the interests of justice.”

43. Section 48 of the said Act is replaced by the following section:

“48. A judge convicting a defendant under this Act may, on the application of the Minister, order the defendant to pay the costs fixed by regulation in respect of the seizure and preservation of any thing seized under section 40.1 or 40.3.

However, the judge may reduce the amount if he is convinced that the Minister unduly delayed instituting proceedings or caused the commencement of proceedings to be delayed without sufficient cause.

On an application of the Minister made within 30 days after a judgment has been rendered in proceedings to impose a penal sanction for an offence under this Act or, in cases where the defendant is deemed to have been convicted of the offence, within 90 days after service of the statement of offence, a judge may also order, in cases where a defendant has been convicted of, or is deemed to have been convicted of, an offence under this Act, in addition to any penalty otherwise prescribed for the offence, the confiscation of any thing seized under section 40.1 or 40.3, of the deposit referred to in section 40.4 or of the proceeds referred to in section 40.5.

Prior notice of not less than one clear day of an application under this section shall be served on the defendant, on the person from whom the thing was seized and on the persons claiming a right in the thing seized or in the proceeds referred to in section 40.5, except where they are in the presence of the judge.

Where the confiscation of a thing seized under section 40.1 or 40.3 is ordered, the judge may, on the application of the Minister, authorize the Minister to destroy the thing.”

44. Section 48.1 of the said Act is repealed.

45. Section 50 of the said Act is amended by replacing subsection 1 by the following subsection:

“50. (1) Where an offence has been committed under this Act, any person responsible for the enforcement of this Act shall draw up a report of the offence.”

46. For the fiscal year 1996-97, the appropriations granted to the Office des ressources humaines with respect to the social benefits and other conditions of employment of the persons assigned to the activities of the Collection Fund shall be transferred, to the extent determined by the Government, to the Ministère du Revenu.

47. This Act comes into force on 20 June 1996.