



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 141

(2000, chapter 36)

**An Act to amend the Act respecting the
Ministère du Revenu as regards the
suspension of recovery measures**

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Passage 16 June 2000
Assented to 16 June 2000**

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EXPLANATORY NOTES

This bill amends the Act respecting the Ministère du Revenu to give effect to the Minister of Revenue's Statement of 4 May 2000. The object of the bill is to modify the Québec tax system to provide for the suspension of recovery measures when an objection or an appeal is filed by a taxpayer. The recovery measures will then be suspended for 90 days after the Minister's decision on the objection or, if the taxpayer opts to appeal the decision, until a judgment settles the dispute.

The bill allows for a taxpayer in certain cases to apply for the repayment of an amount paid or the discharge of security given.

Lastly, the bill contains measures allowing the Minister to apply to the court if recovery is in jeopardy.

Bill 141

AN ACT TO AMEND THE ACT RESPECTING THE MINISTÈRE DU REVENU AS REGARDS THE SUSPENSION OF RECOVERY MEASURES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. The Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by inserting the following section after section 1.2:

“1.2.1. For the purposes of sections 10.1, 12.0.2, 12.0.3 and 21.0.1, a large corporation is

(a) in the case of a corporation referred to in any of subparagraphs *a* to *c* of the first paragraph of section 1132 of the Taxation Act (chapter I-3), a corporation whose paid-up capital established in accordance with Book III of Part IV of the Taxation Act for the particular taxation year is at least \$10,000,000;

(b) in the case of an insurance corporation, other than a corporation referred to in subparagraph *a*, a corporation whose paid-up capital that would be established in accordance with Title II of Book III of Part IV of the Taxation Act if the corporation were a bank and if paragraph *a* of section 1140 of the Taxation Act were replaced by paragraph *a* of subsection 1 of section 1136 of the Taxation Act for the particular taxation year is at least \$10,000,000;

(c) in the case of a cooperative, a cooperative whose paid-up capital established in accordance with Title I of Book III of Part IV of the Taxation Act for the particular taxation year is at least \$10,000,000.

The particular taxation year refers to the year in respect of which an assessment or determination is made under a fiscal law.”

2. The said Act is amended by inserting the following section after section 10:

“10.1. Where a person has given security in guarantee of the payment of an amount in dispute referred to in section 12.0.3, the person may apply in writing for the repayment or discharge of the portion of the security guaranteeing the amount in dispute.

(a) after 120 days have elapsed following notification of the notice of objection and no decision under section 93.1.6 has been sent by the Minister; or

(b) if the person brings an appeal or a summary appeal.

Where the person is a large corporation, the repayment or discharge of the security is limited to one half of the amount in dispute.

The Minister must repay or discharge the security with all due dispatch.”

3. The said Act is amended by inserting the following after section 12.0.1 :

“12.0.2. The Minister may not, in respect of an unpaid amount, before the expiry of the 90th day following the date of mailing of an assessment issued pursuant to sections 220.2 to 220.13 of the Act respecting municipal taxation (chapter F-2.1), an assessment or determination issued pursuant to the Taxation Act, an assessment relating to an amount payable under section 34.1.1 or 37.6 of the Act respecting the Régie de l'assurance maladie du Québec (chapter R-5), an assessment issued pursuant to sections 358 to 360 of the Act respecting the Québec sales tax (chapter T-0.1), an assessment issued pursuant to the Act respecting the Québec Pension Plan (chapter R-9) where the individual is required to pay the amount otherwise than as an employer, or a decision rendered pursuant to the Act respecting real estate tax refund (chapter R-20.1),

(a) institute proceedings before a court;

(b) issue a certificate under section 13;

(c) require a person to make a payment under sections 15 to 15.3;

(d) issue a certificate and prescribe seizure under section 16;

(e) order that the amount owing, the interest and the penalties be paid immediately on assessment as provided in section 27.0.2;

(f) apply any refund to which a person is entitled to the payment of the amount, in accordance with the first paragraph of section 31;

(g) apply an amount payable by a public body to which a person is entitled to the payment of the amount, under the first paragraph of section 31.1.1;

(h) register a legal hypothec in respect of the amount.

Where the debtor is a large corporation, this section applies only to one half of the unpaid amount.

This section does not apply

(a) to an assessment issued in respect of tax payable pursuant to section 26 of the Taxation Act in respect of the disposition of a taxable Québec property ;

(b) to the amounts that a person is required to pay as a mandatary of the Minister ;

(c) to the penalties payable following a failure to remit or pay an amount referred to in subparagraphs *a* and *b* of this paragraph ;

(d) to the interest payable on an amount referred to in any of subparagraphs *a* to *c* of this paragraph.

“12.0.3. The Minister may not take, in respect of an amount that is the subject of an objection, an appeal or a summary appeal, the recovery measures enumerated in the first paragraph of section 12.0.2 during such time as an objection, appeal or summary appeal subsists in relation to an assessment, determination or decision referred to in that section, or before the expiry of the time limit for making an objection or bringing an appeal or summary appeal.

Where the debtor is a large corporation, this section applies only to one half of the amount in dispute.”

4. The said Act is amended by inserting the following paragraph after the first paragraph of section 17 :

“Notwithstanding the first paragraph, sections 10.1, 12.0.2, 12.0.3, 17.0.1 and 21.0.1 apply except where the Minister has legitimate reasons to believe that a person has left or is about to leave Québec.”

5. The said Act is amended by inserting the following sections after section 17 :

“17.0.1. Notwithstanding sections 10.1, 12.0.2, 12.0.3, 21.0.1 and 27.0.1, the Minister may apply to a judge acting in chambers of a court of competent jurisdiction for authorization

(a) to refuse an application under section 10.1 for the repayment or discharge of security ;

(b) to immediately take any measure, including judicial seizure, to recover the unpaid amount, on the conditions that the judge considers reasonable in the circumstances ;

(c) to refuse an application under section 21.0.1 for a repayment ;

(d) to register a legal hypothec.

The authorization may be granted *ex parte* in urgent circumstances. The judge shall grant the authorization if the judge is satisfied that there are reasonable grounds to believe that recovery may be in jeopardy. The motion shall be heard and decided by preference.

“17.0.2. The judge to whom a motion is made by the Minister under section 17.0.1 may grant the authorization even if no notice of assessment or determination has been sent to the person, if the judge is satisfied that receipt of the notice by the person would further jeopardize recovery of the amount.

“17.0.3. The allegations contained in an affidavit produced in support of a motion under section 17.0.1 must contain reasons.

“17.0.4. The Minister shall serve an authorization granted *ex parte* under section 17.0.1, together with the motion and the affidavit, on the person concerned within three days after it is granted, except if the judge orders that it be served within some other time limit.

For the purposes of section 17.0.2, the notice of assessment or determination shall be served at the same time as the authorization if the notice has not already been sent to the person.

The authorization shall be served by registered mail or personal service. Another mode of service may also be authorized by the judge.

“17.0.5. Within 30 days of service of an authorization granted *ex parte* under section 17.0.1, the person concerned may, by motion, apply for a review of the authorization to the court of competent jurisdiction. At least six days' notice must be given to the Minister before the date on which the motion is presented.

The court may extend that time limit if the person demonstrates that it was impossible in fact for the person to act and that the application was made as soon as circumstances permitted.

The motion shall be heard and decided by preference. The court may confirm, vacate or vary the authorization and make any order it considers expedient.

The judgment is without appeal.”

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

“21.0.1. Where a person has paid sums in relation to the payment of an amount in dispute referred to in section 12.0.3, the person may apply in writing for the repayment of the portion of the sums paid in relation to the amount in dispute

(a) after 120 days have elapsed following notification of the notice of objection and no decision under section 93.1.6 has been sent by the Minister; or

(b) if the person brings an appeal or a summary appeal.

Where the person is a large corporation, the repayment is limited to one half of the amount in dispute.

The Minister must make the repayment with all due dispatch.

Sections 1052 and 1053 of the Taxation Act, with the necessary modifications, apply to the repayment.”

7. Section 25 of the said Act is amended by adding the following paragraph after the second paragraph:

“This section does not apply in respect of a repayment referred to in section 21.0.1.”

8. Section 27.3 of the said Act is amended by adding the following paragraph:

“However, prescription is suspended for the time during which the Minister cannot recover an unpaid amount by reason of section 12.0.3.”

9. The said Act is amended by inserting the following section after section 32:

“32.1. Where interest was paid on an amount in dispute that was refunded pursuant to section 21.0.1 and it is subsequently established that a person is required to pay all or a part of the amount refunded, the interest on that amount owed by the person is payable from the date on which it was paid or allocated by the Minister, and the Minister may at any time assess the person in respect of such interest.”

10. Section 93.1.10 of the said Act is amended by replacing subparagraph *b* of the first paragraph by the following subparagraph:

“(b) 90 days have elapsed in the case of an objection referred to in section 12.0.3, or 180 days have elapsed in the other cases, following notification of the notice of objection and no decision has been sent by the Minister by mail.”

11. Section 93.1.21 of the said Act is amended by adding the following paragraph:

“Where the Court decides an appeal brought by a person concerning an assessment or determination in respect of which recovery measures have been suspended pursuant to sections 12.0.2 and 12.0.3, or where there has been a withdrawal or dismissal without trial of the appeal, the Court may, on the

application of the Minister, order the person to pay to the Minister an amount not exceeding 10% of any part of the amount in dispute in respect of which the Court considers the appeal was not reasonably founded, where the Court is of the opinion that one of the reasons for which the appeal was brought or continued was to postpone the payment of an amount payable under such an assessment or determination.”

12. Section 93.1.24 of the said Act is amended by adding “, subject to sections 12.0.2 and 12.0.3” after “object of the appeal”.

13. Section 93.29 of the said Act is amended by adding the following paragraph :

“Where the tribunal decides a summary appeal brought by a person concerning an assessment or determination in respect of which recovery measures have been suspended pursuant to sections 12.0.2 and 12.0.3, or where there has been a withdrawal or dismissal without trial of the summary appeal, the tribunal may, on the application of the Minister, order the individual to pay to the Minister an amount not exceeding 10% of any part of the amount in dispute in respect of which the tribunal considers the appeal was not reasonably founded, where the tribunal is of the opinion that one of the reasons for which the appeal was brought or continued was to postpone the payment of an amount payable under such an assessment or determination.”

14. The provisions of this Act apply to notices of assessment, determinations or decisions issued on or after (*insert here the date of coming into force of section 3*).

15. This Act comes into force on the date or dates to be fixed by the Government.