



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 121

(2000, chapter 25)

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

Introduced 9 May 2000

Passage in principle 18 May 2000

Passage 16 June 2000

Assented to 16 June 2000

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EXPLANATORY NOTES

This bill makes various amendments to the Act respecting the Ministère du Revenu.

First, amendments are made concerning the obligation to keep and preserve registers and supporting documents, whatever the medium used, imposed on every person who operates a business or is required to deduct, withhold or collect an amount under a fiscal law.

The bill clarifies certain provisions relating to the power to examine, audit, copy or seize documents or things connected with the amount of duties that should be paid, deducted, withheld or collected under a fiscal law, particularly as regards the use of certain functions of computer programs or electronic components that results in the alteration or deletion of data.

The bill clarifies other provisions relating to certain powers of the Minister of Revenue and amends certain provisions related to penal matters.

Lastly, the bill amends other legislative provisions to adapt them to terminological changes made in the Act respecting the Ministère de Revenu.

LEGISLATION AMENDED BY THIS BILL :

- 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);
- Act respecting the Québec sales tax (R.S.Q., chapter T-0.1).

Bill 121

AN ACT TO AMEND THE ACT RESPECTING THE MINISTÈRE DU REVENU AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

TAXATION ACT

1. Section 1079.3 of the Taxation Act (R.S.Q., chapter I-3), amended by section 293 of chapter 5 of the statutes of 2000, is again amended by striking out “books and”.

ACT RESPECTING THE MINISTÈRE DU REVENU

2. Section 1.0.1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is replaced by the following section :

“1.0.1. In any fiscal law and the regulations, unless the context indicates a different meaning,

“register” includes any document, whatever the medium used, that is used to collate information in particular for accounting, financial, fiscal or legal purposes and includes the term “record” whenever that term is used in a fiscal law or in the regulations made under such a law to designate a register ;

“supporting document” includes any document, whatever the medium used, or any other thing supporting information that is or should be contained in a register.”

3. Section 17.3 of the said Act, amended by section 28 of chapter 65 of the statutes of 1999, is again amended by adding the following subparagraphs after subparagraph *g* of the first paragraph :

“(h) destroys, alters, mutilates or otherwise disposes of registers, supporting documents or other documents for the purpose of evading the payment or remittance of duties imposed by a fiscal law ;

“(i) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits or assents to or acquiesces in the omission to enter a material particular in registers or supporting documents ;

“(j) fails to keep registers or supporting documents in accordance with subsection 1 of section 34 ;

“(k) fails to comply with a direction or order of the Minister under section 34 or 35;

“(l) contravenes section 34.1;

“(m) fails to preserve registers or supporting documents in accordance with sections 35.1 to 35.5.”

4. Section 17.5 of the said Act, amended by section 29 of chapter 65 of the statutes of 1999, is again amended

(1) by adding the following subparagraphs after subparagraph *i* of the first paragraph :

“(j) destroys, alters, mutilates or otherwise disposes of registers, supporting documents or other documents for the purpose of evading the payment or remittance of duties imposed by a fiscal law ;

“(k) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits or assents to or acquiesces in the omission to enter a material particular in registers or supporting documents ;

“(l) fails to keep registers or supporting documents in accordance with subsection 1 of section 34 ;

“(m) fails to comply with a direction or order of the Minister under section 34 or 35 ;

“(n) contravenes section 34.1 ;

“(o) fails to preserve registers or supporting documents in accordance with sections 35.1 to 35.5.”;

(2) by replacing “*b, b.1 and d to h*” in the second paragraph by “*b, b.1, d to h and j to o*” ;

(3) by replacing “*b, b.1 and c*” in the third paragraph by “*b to c and j to o*”.

5. Section 17.9 of the said Act, amended by section 32 of chapter 65 of the statutes of 1999, is again amended by replacing “*b and c*” in the second paragraph by “*b, c and j to o*”.

6. Section 25.4 of the said Act is repealed.

7. The heading of Division V of Chapter III of the said Act is replaced by the following heading :

“REGISTERS AND SUPPORTING DOCUMENTS”.

8. Section 34 of the said Act is amended

(1) by striking out “and books of account” in the first paragraph of subsection 1;

(2) by replacing the second paragraph of subsection 1 by the following paragraph:

“The registers and the supporting documents that support the information contained in the registers must be kept in the appropriate form and, where applicable, in the manner the Minister determines and communicates in a writing sent by registered mail or personal service which directs the person concerned to comply therewith, and must contain the information necessary to establish any amount that must be deducted, withheld, collected or paid under a fiscal law.”;

(3) by striking out “books of account, including” in the first paragraph of subsection 2;

(4) by striking out “and books” in the second and third paragraphs of subsection 2.

9. The said Act is amended by inserting the following section after section 34:

“34.1. Where a register or supporting documents are kept by means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling or processing the data in whatever manner, no function of any computer program or electronic component that is or may be installed in the electronic device or computer system to modify, correct, delete, cancel or otherwise alter data without preserving the original data and its subsequent modifications, corrections, deletions, cancellations or alterations may be used.

Any person who keeps a register or supporting documents in accordance with subsection 1 of section 34 by means of such an electronic device or computer system is presumed to have used such a function if a computer program or an electronic component having a function described in the first paragraph is found in any premises or place in which the person carries on a business or keeps property or in which the person does anything relating to any business or keeps or should keep registers pursuant to a fiscal law. However, such presumption does not apply where the function is a standard component of software or a software subsystem of a computer system that is inherent in the operation of a computer.

The foregoing presumption may be rebutted by proving that the computer program or electronic component contained the function described in the first paragraph without the knowledge or consent of the person keeping the register or the supporting documents.”

10. Section 35 of the said Act is replaced by the following section :

“35. Where a person does not keep appropriate registers, the Minister may, in a writing sent by registered mail or personal service, direct the person to keep the registers specified by the Minister, and the person must comply with such obligation.”

11. Section 35.1 of the said Act is replaced by the following section :

“35.1. Every person required to keep registers shall preserve them, together with any supporting document that supports the information contained therein, for six years after the last year to which they relate.

Every person who keeps registers or supporting documents on electronic or computerized medium shall preserve them in intelligible form on the same medium for the preservation period indicated in the first paragraph.

The Minister may, subject to the terms and conditions the Minister determines, dispense a person or class of persons from the obligation set out in the second paragraph.”

12. Section 35.3 of the said Act is amended by replacing “, books of account and vouchers” by “and supporting documents”.

13. Section 35.4 of the said Act is amended by replacing “, books of account and vouchers” by “and supporting documents”.

14. Section 36.1 of the said Act is amended by replacing “a voucher” in the first paragraph by “supporting document”.

15. The said Act is amended by inserting the following section before section 38 :

“37.7. In this division and the regulations thereunder, unless the context indicates a different meaning, “document” means any document, whatever the medium used, including any computer program, and the equipment carrying the document, in particular any electronic component.”

16. Section 38 of the said Act is amended

(1) by replacing “books or registers in accordance with a fiscal law are or must be kept” in the first paragraph by “registers are or should be kept pursuant to a fiscal law”;

(2) by replacing subparagraph *a* of the second paragraph by the following subparagraph :

“(a) audit or examine supporting documents and registers, and any other document or thing which may relate to the information that is or should be contained in the registers or supporting documents or which may relate to the amount of any duty that should be paid, deducted, withheld or collected under a fiscal law, and copy, print out or photograph the document or thing;”;

(3) by replacing “books or registers” in the third line of subparagraph *b* of the second paragraph by “registers or supporting documents”;

(4) by replacing subparagraph *d* of the second paragraph by the following subparagraph :

“(d) if, during an audit or examination, the person believes on reasonable grounds that an offence against a fiscal law or a regulation made under such a law has been committed, seize and remove any document or thing that may be required as evidence of any offence against any provision of a fiscal law or a regulation made under such a law and keep the document or thing until it is produced in judicial proceedings.”;

(5) by striking out “, book, register, paper” in the fourth paragraph.

17. Section 39 of the said Act is amended by replacing subparagraph *b* of the first paragraph by the following subparagraph :

“(b) documents.”

18. Section 42 of the said Act, replaced by section 294 of chapter 5 of the statutes of 2000, is again replaced by the following section :

“42. Any document or thing which has been examined or of which a public servant has taken possession or which has been filed with the Minister may be copied, photographed or printed out and any copy, photograph or printout of such document or thing, certified by the Minister or a person authorized by the Minister, shall be admissible as evidence.”

19. Section 47 of the said Act is replaced by the following section :

“47. The accounting records and statements of account of an advocate or notary, the supporting documents and receipts or evidences of payment are not protected by professional secrecy.”

20. The said Act is amended by inserting the following section after section 60 :

“60.1. Every person who contravenes section 34.1 is guilty of an offence and is liable to a fine of not less than \$2,000 nor more than \$25,000 and, for a second offence within five years, to a fine of not less than \$25,000 nor more than \$100,000 and, for a third or subsequent offence within that period, to a fine of not less than \$100,000 nor more than \$500,000.

In addition to the fine of \$100,000 to \$500,000 prescribed in the first paragraph for a third or subsequent offence, the court may, notwithstanding article 231 of the Code of Penal Procedure (chapter C-25.1), sentence the offender to imprisonment for not more than two years.”

21. Section 61 of the said Act is amended by striking out “34, 35 to 35.5.”.

22. The said Act is amended by inserting the following section after section 61 :

“61.0.0.1. Every person who contravenes any of sections 34 and 35 to 35.5 is guilty of an offence and, in addition to any penalty prescribed by this Act, is liable to a fine of not less than \$2,000 nor more than \$100,000 or, notwithstanding article 231 of the Code of Penal Procedure (chapter C-25.1), to both the fine and imprisonment not exceeding six months.”

23. Section 61.1 of the said Act is amended by replacing “section 60 or 61” in the first paragraph by “any of sections 60 to 61.0.0.1”.

24. Section 62.1 of the said Act, enacted by section 37 of chapter 65 of the statutes of 1999, is amended

(1) by replacing “\$1,000” in the second line of the portion following subparagraph *c* of the first paragraph by “\$2,000”;

(2) by replacing “books of account” in subparagraph *a* of the first paragraph by “supporting documents”;

(3) by replacing subparagraph *b* of the first paragraph by the following subparagraph :

“(b) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits or assents to or acquiesces in the omission to enter a material particular in the records or supporting documents of a person subject to a fiscal law ; or”.

ACT RESPECTING THE QUÉBEC PENSION PLAN

25. Section 85 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by striking out “or books of account” in paragraphs *b* and *c*.

ACT RESPECTING THE QUÉBEC SALES TAX

26. Section 1 of the Act respecting the Québec sales tax (R.S.Q., chapter T-0.1), amended by section 305 of chapter 83 of the statutes of 1999, is again amended

(1) by replacing “and a record” in the definition of “document” by “, a record and a supporting document”;

(2) by inserting “or supporting document” after “record” in the definition of “invoice”.

27. Section 202 of the said Act is amended by inserting “or supporting documents” after “records” in the first line.

28. Section 339 of the said Act is amended by replacing “separate records, books of account and accounting systems are maintained” in the fifth and sixth lines by “books of account, other records and accounting systems are maintained separately”.

29. Section 340 of the said Act is amended by replacing “separate records, books of account and accounting systems are not maintained” in paragraph 2 by “books of account, other records and accounting systems are not maintained separately”.

30. Section 475 of the said Act is amended by replacing “separate records, books of account and accounting systems are maintained” in paragraph 2 by “books of account, other records and accounting systems are maintained separately”.

31. This Act comes into force on 16 June 2000. However, the second paragraph of section 34.1 of the Act respecting the Ministère du Revenu, enacted by section 9, comes into force on 13 December 2000.