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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

## Bill 20

(2004, chapter 4)

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

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**Introduced 29 October 2003**

**Passage in principle 11 November 2003**

**Passage 22 April 2004**

**Assented to 22 April 2004**

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## EXPLANATORY NOTES

*This bill amends the Act respecting the Ministère du Revenu to adapt certain rules of procedure specific to fiscal legislation to the new rules introduced by the Code of Civil Procedure on 1 January 2003, to specify certain rules of procedure applicable to taxation matters, to introduce the notion of general authorization and to change certain rules relating to the liability of directors and governmental tax compensation.*

*The bill includes amendments to ensure the concordance of the Act to facilitate the payment of support and the Act respecting property tax refund with the Act respecting the Ministère du Revenu in the area of procedure.*

*The bill amends the Tobacco Tax Act and the Fuel Tax Act to specify the obligations of a person who intends to retail tobacco or fuel in Québec.*

*The bill also amends certain Acts to ensure that notices of assessment sent by the Minister of Revenue can be sent otherwise than by mail.*

*Lastly, certain rules applicable to successions opened before 28 May 1986 are also amended.*

## LEGISLATION AMENDED BY THIS BILL :

- Act respecting municipal taxation (R.S.Q., chapter F-2.1);
- 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 to facilitate the payment of support (R.S.Q., chapter P-2.2);
- Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);
- Act respecting property tax refund (R.S.Q., chapter R-20.1);

- Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001);
- Act respecting the Québec sales tax (R.S.Q., chapter T-0.1);
- Fuel Tax Act (R.S.Q., chapter T-1).



## Bill 20

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

#### ACT RESPECTING MUNICIPAL TAXATION

- 1.** Section 220.8 of the Act respecting municipal taxation (R.S.Q., chapter F-2.1) is amended by replacing “the mailing” in paragraph 1 by “the sending”.
- 2.** Section 220.9 of the said Act is amended by replacing “the mailing” by “the sending”.

#### TOBACCO TAX ACT

- 3.** Section 5.1 of the Tobacco Tax Act (R.S.Q., chapter I-2) is amended

(1) by inserting the following paragraph after the first paragraph:

“In addition, a person already holding a registration certificate issued under Title I of the Act respecting the Québec sales tax shall, before engaging in the retail sale of tobacco in Québec, inform the Minister thereof by registered or certified mail and, at the same time, provide a declaration to the Minister containing the addresses of the establishments the person intends to operate or cause to be operated by a third person.”;

(2) by replacing “The retail vendor” in the second paragraph by “A person to whom this section applies”.

#### TAXATION ACT

- 4.** Section 429 of the Taxation Act (R.S.Q., chapter I-3) is amended by replacing “the mailing” in the portion of the second paragraph before subparagraph *a* by “the sending”.
- 5.** Section 736 of the said Act is amended by replacing “is mailed” in subparagraph *c* of the second paragraph by “is sent”.
- 6.** Section 737.18.4 of the said Act is amended by replacing “of mailing” in subparagraph *i* of subparagraph *b* of the second paragraph by “of sending”.

- 7.** Section 851.22.29 of the said Act is amended by replacing “is mailed” in the portion of the first paragraph before subparagraph *a* by “is sent”.
- 8.** Section 851.50 of the said Act is amended by replacing “of mailing” in paragraph *a* by “of sending”.
- 9.** Section 1010 of the said Act is amended by replacing “of mailing” in paragraph *a* of subsection 2 by “of sending”.
- 10.** Section 1010.0.0.1 of the said Act is amended by replacing “of mailing” in subparagraph *i* of subparagraph *b* of the first paragraph by “of sending”.
- 11.** Section 1029.8.36.91 of the said Act is amended by replacing “of mailing” in subparagraph *i* of subparagraph *b* of the second paragraph by “of sending”.
- 12.** Section 1044.2 of the said Act is amended by replacing “mailed” in the definition of “underpayment amount” by “sent”.
- 13.** Section 1044.3 of the said Act is amended by replacing “mailed” in paragraph *b* by “sent”.
- 14.** Section 1044.4 of the said Act is amended, in paragraph *c*,
- (1) by replacing “of mailing” in subparagraphs *i* and *ii* by “of sending”;
  - (2) by replacing “of mailing” and “mailed” in subparagraph *v* by “of sending” and “sent”, respectively.
- 15.** Section 1079.14 of the said Act is amended by replacing “of mailing” wherever those words appear by “of sending”.
- 16.** Section 1129.29 of the said Act is amended by replacing “of mailing” by “of sending”.

#### ACT RESPECTING THE MINISTÈRE DU REVENU

- 17.** Section 7 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended
- (1) by striking out the second paragraph;
  - (2) by replacing the third paragraph by the following paragraph:

“The regulation may allow that a facsimile of the signature of the Minister, Deputy Minister or that public servant be affixed on the documents determined therein. Such a facsimile shall have the same force as the signature itself.”

**18.** Section 12.0.2 of the said Act is amended by replacing “of mailing” in the first paragraph by “of sending”.

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

“**20.** Every person who deducts, withholds or collects any amount under a fiscal law is deemed to hold it in trust for the State, separately from the person’s patrimony and the person’s own funds, for payment to the State in the manner and at the time provided under a fiscal law.

Where at any time an amount deemed by the first paragraph to be held by a person in trust for the State is not paid to the State in the manner and at the time provided under a fiscal law, an amount equal to the amount thus deducted, withheld or collected is deemed, from the time the amount is deducted, withheld or collected, to be held in trust for the State, separately from the person’s patrimony and the person’s own funds, and to form a separate fund not forming part of the property of that person, whether or not the amount has in fact been held separately from that person’s patrimony or that person’s own funds.

However, the person may, when filing a return with the Minister under section 468 or 470 of the Act respecting the Québec sales tax (chapter T-0.1), withdraw from the total amount that the person is deemed by the first paragraph to hold in trust for the State, the amounts that the person is entitled to deduct and that the person has actually deducted in the calculation of the amount to be remitted.”

**20.** Section 24.0.1 of the said Act is amended by adding the following subparagraph to the first paragraph:

“(c) where the corporation has instituted proceedings for its liquidation or dissolution, or where it has been dissolved.”

**21.** Section 27.0.1 of the said Act is amended

(1) by replacing “mailed” in the first paragraph by “sent”;

(2) by replacing “mailed” in the second paragraph by “sent”.

**22.** Section 28.2 of the said Act is amended by replacing “of mailing” in the first paragraph by “of sending”.

**23.** Section 31.1.4 of the said Act is amended

(1) by replacing “designated therein as administering trust funds or as being joint stock companies or agencies of the Government, except the Société immobilière du Québec” in the second paragraph by “carrying on trust activities and government businesses or bodies with share capital, with respect to amounts paid to persons other than their employees or suppliers of goods or services”;

(2) by adding the following paragraph at the end:

“Notwithstanding the second paragraph, the Société immobilière du Québec is a public body.”

**24.** Section 32 of the said Act is replaced by the following section:

**“32.** Where the Minister, by error or on the basis of inaccurate or incomplete information, has refunded to a person or allocated to a person’s account an amount greater than that which should have been refunded or allocated, the excess amount is exigible from the date on which it was paid or allocated by the Minister, and the Minister may, within four years following the day on which the Minister refunded or allocated such excess amount, assess the person for that amount. The Minister may also assess, within that time, another person who obtained the amount without being entitled to it.

The assessments may be issued at any time if the amount was obtained by false representation of the facts through voluntary omission or if fraud was committed.”

**25.** The said Act is amended by inserting the following sections after section 40.1:

**“40.1.1.** A judge of the Court of Québec may, on an *ex parte* application following an information laid in writing and under oath by a public servant of the Ministère du Revenu authorized by regulation, issue an authorization in writing permitting any public servant of the Ministère du Revenu to use any investigative technique or procedure or do anything described by the judge that would, if not so authorized, constitute an unreasonable search or seizure in respect of a person or a person’s property; the public servant so authorized may call upon the assistance of a peace officer.

The judge may not, however, authorize the interception of a private communication, as defined in section 183 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46). Nor may the judge authorize the observation by means of a television camera or other similar electronic device of any person who is engaged in an activity in circumstances in which the person has a reasonable expectation of privacy.

The judge may issue the authorization if the judge is satisfied

(a) that there are reasonable grounds to believe that an offence against a fiscal law for which a person is liable to imprisonment has been or will be committed and information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;

(b) that it is in the best interests of the administration of justice to issue the authorization; and



(c) that there is no other provision in a fiscal law or in the Code of Penal Procedure (chapter C-25.1) that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done.

Nothing in the first paragraph shall be construed as permitting interference with the physical integrity of any person.

The authorization shall set out such terms and conditions as the judge considers appropriate, in the circumstances, to ensure that the search or seizure is reasonable, to protect the reasonable expectation of privacy and to protect lawyers' and notaries' professional secrecy.

In the case of an authorization to enter and search a place covertly, the judge shall require that notice of the entry and search be given after its execution within the time that the judge considers appropriate in the circumstances.

Where the judge who grants an authorization to enter and search covertly or any other judge having jurisdiction to grant such an authorization is satisfied, on an *ex parte* application made on the basis of an affidavit submitted in support of an application for extension of the period referred to in the sixth paragraph, that the interests of justice warrant the granting of the application, the judge may grant an extension, or a subsequent extension, of the period, but no extension may exceed one year.

The execution of an authorization issued under this section may not commence more than 15 days after it is issued or end more than 30 days after the expiry of that 15-day period. However, where the judge is satisfied, on an *ex parte* application made on the basis of an affidavit submitted in support of an application for extension to complete the execution of the authorization, that the interests of justice warrant the granting of the application, the judge may grant an extension of not more than 30 days. The execution of the authorization may not commence, without the written authorization of the judge who granted it, before 7 a.m. or after 8 p.m., or on a non-judicial day.

The authorization provided for in this section may be obtained by telewarrant in accordance with the procedure set out in the Code of Penal Procedure, with the necessary modifications.

**“40.1.2.** The judge who granted an authorization under section 40 or 40.1.1 may order any person to provide assistance, where the person's assistance may reasonably be considered to be required to give effect to the authorization.

**“40.1.3.** At an inquiry relating to an offence against a fiscal law or a regulation made by the Government under a fiscal law, a judge of the Court of Québec may, on an *ex parte* application following an information laid in writing and under oath by a public servant of the Ministère du Revenu, order a person, other than the person under inquiry,

(a) to produce documents, or copies of them certified by affidavit to be true copies, or to produce information; or

(b) to prepare a document based on documents or information already in existence and produce it.

The order shall require the documents or information to be produced within the time, at the place and in the form specified and given to a public servant named in the order.

Before making an order, the judge must be satisfied that there are reasonable grounds to believe that

(a) an offence against a fiscal law or a regulation made by the Government under a fiscal law is being or has been committed;

(b) the documents or information will afford evidence respecting the commission of the offence; and

(c) the person who is subject of the order has possession or control of the documents or information.

The order may contain any terms and conditions that the judge considers appropriate, including terms and conditions to protect lawyers' and notaries' professional secrecy.

Where the judge who makes the order or any other judge having jurisdiction to make such an order is satisfied, on an *ex parte* application made on the basis of an affidavit submitted by a public servant of the Ministère du Revenu in support of the application, that the interests of justice warrant the granting of the application, the judge may vary or revoke the order or set a new time limit.

The documents or information so produced shall be kept until they are produced in judicial proceedings.

Every copy of a document produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in any proceeding and has the same probative force as the original document would have if it had been proved in the ordinary way."

**26.** Section 40.2 of the said Act is amended by replacing "section 40 or 40.1" in the first paragraph by "any of sections 40, 40.1, 40.1.1 and 40.1.3".

**27.** Section 61 of the said Act is amended by striking out "20,".

**28.** Section 61.2 of the said Act, amended by section 300 of chapter 2 of the statutes of 2003, is again amended by replacing "section 39.2 or 61.1" by "any of sections 39.2, 40.1.3 and 61.1".

**29.** Section 72.5 of the said Act is amended by striking out the second paragraph.

**30.** The said Act is amended by inserting the following section after section 72.5:

**“72.5.1.** For the purposes of the Code of Penal Procedure (chapter C-25.1), a person referred to in section 38 or 72.4 is a person responsible for the enforcement of a fiscal law.”

**31.** Section 74 of the said Act is amended by striking out the second paragraph.

**32.** Section 83 of the said Act is amended by replacing “mailed or otherwise communicated” by “sent”.

**33.** Section 87 of the said Act is amended by replacing “of mailing” in the first paragraph by “of sending”.

**34.** Section 88 of the said Act is amended by replacing “of mailing” by “of sending”.

**35.** Section 93 of the said Act is amended

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

“In addition, any proceeding to which the Deputy Minister is a party shall be served upon the Deputy Minister at the Montréal or Québec office of the legal department of the Ministère du Revenu, by leaving a copy of the proceeding with a person in charge of that office.”;

(2) by adding the following paragraph at the end:

“The return of service must mention the name of the person with whom the copy of the proceeding was left.”

**36.** Section 93.1 of the said Act is amended by replacing the second paragraph by the following paragraph:

“No expert may be heard at the hearing unless a written report has been filed at the office of the court and served upon the parties with the notice.”

**37.** Section 93.1.1 of the said Act is amended by replacing “of mailing” in the first paragraph by “of sending”.

**38.** Section 93.1.17 of the said Act is replaced by the following section:

**“93.1.17.** An appeal before the Court of Québec is brought by means of a motion in accordance with the ordinary procedure governing actions and applications in civil matters.

Two or more assessments may be the subject of a single appeal. However, two or more persons appealing assessments may not join in the same appeal.”

**39.** Section 93.1.18 of the said Act is amended by replacing the first paragraph by the following paragraph :

**“93.1.18.** A fee in the amount determined by regulation must be paid to the clerk upon the filing of the motion.”

**40.** Section 93.1.19 of the said Act is amended by replacing “ordinary actions” by “actions and applications”.

**41.** The said Act is amended by inserting the following sections after section 93.1.19 :

**“93.1.19.1.** No case may be inscribed for judgment by default against the Deputy Minister before the lapse of 30 days after the expiry of the time fixed to appear.

**“93.1.19.2.** Notice of inscription for judgment or for proof and hearing must be given to the Deputy Minister, when in default for failure to appear or to plead, at least 15 days prior to the date when such inscription is to be proceeded upon.

**“93.1.19.3.** The Deputy Minister shall file a written defence and serve it within 60 days of the date indicated in the notice to the defendant provided for in article 119 of the Code of Civil Procedure (chapter C-25) accompanying the motion for appeal, unless the parties agreed, before the date indicated in the notice, on another time limit.

**“93.1.19.4.** A party may conduct an examination on discovery, before or after the filing of the defence, regardless of the amount in dispute.

A party must fulfill any undertakings made during an examination at least 30 days before the date of the hearing. If the party fails to fulfill such undertakings, the court may make any order it considers appropriate.”

**42.** Section 93.1.23 of the said Act is amended by replacing “\$500” in the third paragraph by “\$2,000”.

**43.** Section 93.1.25 of the said Act is amended by replacing “The deposits of \$90 mentioned in this chapter” in the first paragraph by “The fee payable under section 93.1.18”.

**44.** Section 93.13 of the said Act is amended

- (1) by replacing “dépose” in the French text by “produit”;
- (2) by striking out “together with \$35 to cover costs”;
- (3) by adding the following paragraphs at the end :

“A fee in the amount determined by regulation must be paid upon the filing or sending of the form.

Two or more assessments may be the subject of a single appeal. However, two or more persons may not join in the same summary appeal.”

ACT TO FACILITATE THE PAYMENT OF SUPPORT

**45.** Section 78 of the Act to facilitate the payment of support (R.S.Q., chapter P-2.2) is amended by inserting “and the second and third paragraphs of section 93 of that Act” after “(chapter M-31)” in the third paragraph.

ACT RESPECTING THE QUÉBEC PENSION PLAN

**46.** Section 68 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing “of mailing” by “of sending”.

**47.** Section 69 of the said Act is amended by replacing “of the mailing” in the third paragraph by “of the sending”.

ACT RESPECTING PROPERTY TAX REFUND

**48.** Section 21 of the Act respecting property tax refund (R.S.Q., chapter R-20.1) is amended by replacing “of mailing” in paragraph *a* by “of sending”.

**49.** Section 22 of the said Act is amended by replacing “mailing of” by “sending of”.

**50.** Section 23 of the said Act is amended by replacing “of mailing” by “of sending”.

**51.** Section 27 of the said Act is amended by replacing “of mailing” by “of sending”.

**52.** Section 28 of the said Act is replaced by the following section :

“**28.** The provisions of Chapter III.2 of the Act respecting the Ministère du Revenu (chapter M-31) apply, with the necessary modifications, to a decision rendered by the Minister under section 25.

However, the fee payable upon the filing of a motion to appeal a decision referred to in the first paragraph is the fee payable in respect of a summary appeal referred to in section 93.13 of the Act respecting the Ministère du Revenu.”

**53.** Sections 29 to 38 of the said Act are repealed.

#### ACT RESPECTING INCOME SUPPORT, EMPLOYMENT ASSISTANCE AND SOCIAL SOLIDARITY

**54.** Section 95 of the Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001) is amended by replacing “of mailing” in the second and third paragraphs by “of sending”.

**55.** Section 97 of the said Act is amended by replacing “of mailing” in paragraph 1 by “of sending”.

#### ACT RESPECTING THE QUÉBEC SALES TAX

**56.** Section 483 of the Act respecting the Québec sales tax (R.S.Q., chapter T-0.1) is amended by replacing “of mailing” wherever those words appear by “of sending”.

#### FUEL TAX ACT

**57.** Section 10.2 of the Fuel Tax Act (R.S.Q., chapter T-1) is amended by striking out “and a permit issued under the Act respecting petroleum products and equipment (chapter P-29.1)” in the first paragraph.

**58.** Section 26 of the said Act is amended

(1) by inserting the following paragraph after the first paragraph :

“In addition, a person already holding a registration certificate issued under Title I of the Act respecting the Québec sales tax shall, before engaging in the retail sale of fuel in Québec, inform the Minister thereof by registered or certified mail and, at the same time, provide a declaration to the Minister containing the addresses of the establishments the person intends to operate or cause to be operated by a third person.”;

(2) by replacing “The retail dealer” in the second paragraph by “A person to whom this section applies”.

#### TRANSITIONAL AND FINAL PROVISIONS

**59.** Section 20 applies in respect of a director of a corporation that instituted proceedings for its liquidation or dissolution or that was dissolved on or after 22 April 2004.

**60.** Section 24 is applicable also to refunds and allocations made before 22 April 2004.

**61.** Section 31 applies to proceedings in which the trial in first instance has been held but judgment has yet to be rendered on 22 April 2004 and to judgments already rendered on that date but for which the time for appeal has not yet expired.

**62.** Sections 35 and 36, section 38 where it enacts the first paragraph of section 93.1.17 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), and sections 40 to 42 and 45 apply to motions filed at the office of the Court on or after 22 April 2004.

**63.** Section 14 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) applies in respect of property of a succession opened before 28 May 1986 that has not yet been transferred on 22 April 2004.

**64.** Notwithstanding subsection 2 of section 6 of the Act to amend various fiscal laws and other legislation (1986, chapter 15), sections 55 and 56 of the Succession Duty Act (R.S.Q., chapter D-13.2) do not apply in respect of property of a succession opened before 28 May 1986.

In addition, in respect of a succession opened before 28 May 1986, the title relating to property transferred without the permit required by sections 55 and 56 of the Succession Duty Act is valid notwithstanding non-compliance with those provisions.

**65.** This Act comes into force on 22 April 2004, except section 38 where it enacts the second paragraph of section 93.1.17 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) and sections 39 and 44, which come into force on the date of coming into force of the first regulation made after that date by the Government for the purposes of sections 93.1.18 and 93.13 of the Act respecting the Ministère du Revenu, which they enact.